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FEDERAL ANTI-TRUST DECISIONS

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(Volumes 1 to 6)

WITH

TABLES OF REPORTED AND CITED CASES

INCLUDING ALSO -

AN APPENDIX

CONTAINING

THE FEDERAL ANTI-TRUST LAWS

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3. Same—Action for damages, under Sherman Law, Survives Death of Party injured.—An action for treble damages, brought under the Sherman Law, section 7, based on combinations in restraint of trade, survives the death of the person or dissolution of a corporation injured, being an action for injuries to property, which might have been assigned; the modern rule being in favor of assignment of actions, and tort actions for injuries to property which were assignable surviving.—*Ib.* 6—1046

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ACTIONS AND DEFENSES.

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2. **The Only Remedy to Private Party is a Suit for Damages.**—Under the Sherman Law, the only remedy given to any other party than the United States, is a suit for three-fold damages, costs, and attorney's fees. *Gulf, C. & S. F. Ry. Co. v. Miami S. S. Co.*, 86 F., 407. 1—823
3. **Remedy, Action for Damages—No Recourse in Equity.**—The Sherman Law does not authorize a court of equity to entertain a bill by a private party to enforce its provisions, his remedy being by an action at law for damages. *Southern Ind. Exp. Co. v. U. S. Exp. Co.*, 88 F., 659. 1—862
[A private party may now maintain suit for an injunction under section 16 of the Clayton Law.]
4. **A municipal corporation engaged in operating water, lighting, or similar plants, from which a revenue is derived, is, in relation to such matters, a business corporation and may maintain an action under section 7 of the Sherman Law for injury to its "business" by reason of a combination or conspiracy in restraint of interstate trade or commerce made unlawful by such act.** *City of Atlanta v. Chattanooga Foundry & Pipe Works*, 127 F., 23. 2—299
5. **Bringing in Non-Residents.**—The authority given by section 5 of the Sherman Law to bring in non-residents of the district can not be availed of in private suits, and the court can acquire no jurisdiction over them. *Greer, Mills & Co. v. Stoller*, 77 F., 1. 1—620
6. **Right of Action for Damages.**—A contract or combination in restraint of interstate commerce, prohibited by the Sherman Law, is not merely illegal in the sense that it is not enforceable, but is per se unlawful, and one who is harmed in his business or property by such a contract or combination has suffered a legal injury, within the meaning of section 7 of the law, and is by such section given a right of action therefor. *Wheeler-Stenzel Co. v. Nat'l Window Glass Jobbers' Ass'n*, 152 F., 847. 3—222
7. **Private Suits for Damages.**—Under the express terms of the Sherman Law, one injured in business or property by another through a combination or conspiracy to restrain or monopolize interstate trade may sue for his damage. *Ware-Kramer Tobacco Co. v. American Tobacco Co.*, 180 F., 165. 3—787
8. **Liability to Private Citizen.**—By violating a criminal or penal statute one does not render himself liable to a private citizen unless the unlawful conduct is the proximate cause of, or results in, some special injury to such citizen's business or property. *Ware-Kramer Tobacco Co. v. American Tobacco Co.*, 180 F., 165. 3—786
9. **When Private Party Entitled to Injunctive Relief.**—A private party, who has sustained special injury by a violation of the Sherman Law, may sue in a Federal Court for injunction

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under the general equity jurisdiction of the court, where, by reason of diversity of citizenship of the parties, the court has jurisdiction of the suit. *Bigelow v. Calumet & Hecla Mining Co.*, 155 F., 877. 3—305

10. **For Securing Stock, with Voting Power, as Pledge for Loan, and not then Engaging in Business.**—A complaint to recover damages under the Sherman Law charged that defendants combined and conspired to prevent plaintiff from engaging in business and in interstate commerce, and induced S., who was a majority stockholder in plaintiff corporation, to accept a loan from defendant company and pledge as security a majority of plaintiff's capital stock with the absolute voting power; that defendant used such power to elect directors favorable to carrying out the object of the conspiracy, which defendant did by voting that plaintiff should not engage in business—the complaint stated a conspiracy in restraint of interstate trade and commerce in violation of the act. *Penna. Sugar Ref. Co. v. American Sugar Ref. Co.*, 166 F., 261. 3—562

11. **For Conspiring to Ruin Competitor Through Corporations Secretly Controlled.**—A petition to recover three-fold damages for injury to plaintiff's business in interstate and foreign commerce, under the Sherman Law, states a cause of action, where it alleges that plaintiff was a manufacturer of tobacco which it sold in interstate and foreign commerce, and facts showing that defendants conspired to render its business unprofitable and ruin and destroy the same through competing corporations, which they secretly controlled, by enticing away its workmen, by compelling it to pay more than the normal price for leaf tobacco, and to adopt unnecessary and expensive means to sell its products, and that such conspiracy was carried out to the damage of plaintiff in a sum stated; such acts constituting both a conspiracy to restrain interstate commerce and an attempt to monopolize the same, in violation of sections 1 and 2 of the act. *People's Tobacco Co. v. American Tobacco Co.*, 170 F., 408. 3—678

12. **For Combining to Increase Price of Coal and Cost of Transportation.**—A complaint in an action to recover treble damages under Sherman Law, which alleges a combination and conspiracy between defendant and other interstate railroad companies to restrain and monopolize interstate commerce in anthracite coal in violation of sections 1 and 2 of the act, which, as alleged, was carried into effect (1) by increasing the price of coal at the mines, through ownership by the conspirators of the coal companies, and (2) by increasing the charge for transportation of coal to New York, so that the

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two together exceeded the tide-water price, and which contains a sufficient allegation of damage to plaintiff in his business as a coal dealer, states a cause of action under the act which is within the jurisdiction of a circuit court, the gist of the action being the unlawful conspiracy, and the fact that one of the means for carrying it into effect was an increase in freight rates, the reasonableness of which per se must first be determined under the provisions of Interstate Commerce Act, by the Interstate Commerce Commission, not constituting any ground for depriving plaintiff of the right of action expressly given by the Sherman Law. *Meeker v. Lehigh Valley R. R. Co.*, 183 F., 551. 3—973

13. No Right of Action for Preventing the Embarking in Business.—

The Sherman Law, authorizing recovery of treble damages, accruing through an unlawful combination in restraint of interstate and foreign commerce, gives no right of action to one who is not deprived of his existing profits, trade, or commerce by the formation or action of an unlawful combination or monopoly, but is merely prevented from embarking on a new enterprise by the threatening aspect of an already existing monopoly or combination. *American Banana Co. v. United Fruit Co.*, 160 F., 188. 3—378

14. Same—Acts in Foreign Countries.—That the banana market of Central America or some portions thereof has been closed to plaintiff because defendant offered higher prices to producers than did anyone else, and so obtained long-term contracts for the exclusive purchase of the producers' product, did not constitute a violation of the Sherman Law prohibiting combinations, monopolies, etc. *Ib.* 3—379

15. Same—Enticement of Employees.—That defendant had enticed or sought to entice away plaintiff's employees and to oppress such of defendant's own employees as presumed to buy stock in plaintiff company, its business rival, did not of itself constitute a violation of the Sherman Law, prohibiting combinations and monopolies, so as to entitle plaintiff to recover damages on that ground alone. *Ib.* 3—379

16. Same—Enticement of Employees.—That defendant had enticed or sought to entice away plaintiff's employees and to oppress such of defendant's own employees as presumed to buy stock in plaintiff company, its business rival, did not of itself constitute a violation of the Sherman Law, prohibiting combinations and monopolies, so as to entitle plaintiff to recover damages on that ground alone. *Ib.* 3—379

17. Immaterial Whether Restraint be Reasonable or Unreasonable.—

In an action to recover treble damages caused by an unlawful combination in restraint of foreign commerce, in violation of the Sherman Law, whether the restraint of trade caused by the combination was reasonable or unreasonable, was immaterial. *Thomsen v. Union Castle Mail S. S. Co.*, 166 F., 253. (Contra. See *U. S. v. Standard Oil Co.*, 221 U. S., 1.) 3—551

18. Same—Where a combination in restraint of foreign commerce, in violation of the Sherman Law, was put in operation in the United States and affected her foreign commerce, it was not

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- material to a suit by a person injured thereby that it was formed in a foreign country. *Ib.* 3—551
18. Same—Where a combination in restraint of foreign commerce was continuing, it was not material to plaintiff's right to recover treble damages sustained thereby, under the Sherman Law, whether the combination was entered into before or after plaintiffs commenced business, it being equally unlawful to prevent a person from engaging in business as to drive a person out of business. *Ib.* 3—551
19. For Damages, Evidence Sufficient to Submit Case to Jury.—In an action by a private individual to recover threefold damages, authorized by section 7 of the Sherman Law, against an alleged combination of coal dealers in a city, engaged in interstate commerce, to force plaintiff out of business and into bankruptcy, which they were successful in doing, evidence held to entitle plaintiff to submission to the jury of the question whether a combination and conspiracy among defendants existed, whether they maintained a secret organization to keep up prices and to boycott dealers who did not enter the organization, and whether plaintiff was injured as the result of such conspiracy. *Hale v. Hatch & North Coal Co.*, 204 F., 435. 5—169
20. Suit to Enjoin, under Sherman Law, Maintained only at Suit of United States, and by New York under State Law, and not by Private Party.—Though an agreement between members of certain carpenters' and woodworkers' unions binding their members not to work with building trim manufactured in non-union factories was in restraint of trade, and in violation of the Sherman Law and General Business Law of New York, section 340, prohibiting such agreements, a suit to enjoin the enforcement thereof could be maintained only at the instance of the United States or the State of New York, and not by a third person injured thereby. *Paine Lumber Co. v. Neal*, 212 F., 266. 5—442
21. Same—Private Party can not Maintain Suit to Restrain under New York Law unless Affected Injuriouly.—Though an agreement between certain carpenters' and woodworkers' unions to refuse to use building trim manufactured in non-union factories was in restraint of trade and constitutes a misdemeanor in violation of Penal Law of New York, article 54, section 580, subdivision 6, prohibiting a conspiracy to commit acts injurious to trade or commerce, a private individual was not entitled to a suit to restrain the enforcement of such agreement, in the absence of proof that it was aimed at or affected him injuriouly as distinguished from the general public. *Ib.* 5—444

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- 22. Private Party to Maintain Suit to Restrain, under Sherman Law, must have been direct object of Unlawful Agreement.**—The carrying out of an agreement in violation of the Sherman Law, or otherwise in restraint of trade, will not be enjoined at the suit of a private party, not shown to have been the direct object of such agreement or to have suffered special damages. *Paine Lumber Co. v. Neal*, 214 F., 83. 5—446
- 23. Private Party may not Maintain Action to Enforce the Sherman Law, unless he can show a Special Damage to Himself.**—A private individual may not maintain an action to enforce generally the provisions of the Sherman Law; but, in order to rely upon its provisions, an individual must base his cause of action upon its violation, and show a special damage to himself arising from such violation not suffered by the general public. *Union Pacific Railroad Co. v. Frank*, 226 F., 911. 5—922
- 24. Labor Organization, although Unincorporated, an Association under § 7 of the Sherman Law.**—In the Sherman Law, § 8, providing that the word "person" or "persons," wherever used in the act, shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country, the word "associations" includes unincorporated associations, such as labor organizations recognized by Federal and State legislation as lawful, and such an organization may be sued by its name, under section 7, by one injured in his business or property by its action in violation of the provisions of the act. *Dowd v. United Mine Workers of America*, 235 F., 6. 6—657
- 25. Same—Party Preparing to Engage in Interstate Commerce and Prevented by Unlawful Acts, may Maintain Action.**—That a plaintiff, at the time of the alleged unlawful acts of defendants, was not actually engaged in interstate commerce, does not deprive him of a right of action, where he was preparing to so engage and was prevented by the wrongful acts of defendants. *Ib.* 6—657
- 26. Subscribers may maintain, against telephone company, to compel service, where service is prevented by a strike.**—The Judicial Code, section 37, authorizing the dismissal of a suit in the Federal court if it should appear that it does not properly involve a dispute within the jurisdiction of the court, or that parties have been collusively made or joined for the purpose of giving the court jurisdiction, does not deprive the Federal court of jurisdiction over a suit by the subscribers of an interstate telephone company whose employees were on a strike, to compel the company to furnish

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service it had contracted to furnish, though the parties thereto were friendly antagonists, and the telephone company was willing to have the controversy submitted to the Federal court, since the collusion which deprives the court of jurisdiction is not an agreement between the parties that an existing dispute cognizable in the Federal courts shall be brought there, but an agreement so to adjust the situation as to clothe the court with an apparent jurisdiction which it otherwise would not have. *Stephens v. Ohio State Telephone Co.*, 240 F., 768. 6—929

27. Same—Several subscribers may maintain suit to compel service, although each has adequate remedy at law.—Under section 267, Judicial Code, providing that suits in equity shall not be maintained in the Federal courts where a plain, adequate, and complete remedy may be had at law, the fact that each one of a large number of subscribers of an interstate telephone company might have an adequate remedy at law for the interruption of the service which he contracted for does not prevent a suit by several subscribers, on behalf of all, to compel a restoration of the service, since, while the several actions at law were being tried, the suspension of service would continue, and might reach the proportions of a public calamity. *Id.* 6—930

2. By stockholders.

28. Action by Stockholder for Injury to Corporation.—The declaration alleged that the T. Telegraph Co., in which plaintiff was a stockholder, was organized to operate an independent system throughout the United States, after which the defendant company secured control of the T. Co. by the purchase of its stock, to prevent competition in interstate telephone traffic, which it had planned to carry on. Defendant since so managed the T. Co. as not to develop its business, but to prevent it from doing business, and suppressed competition, until the T. Co. was forced into the hands of a receiver. By such control defendant had monopolized interstate telephone commerce, and thereby rendered worthless plaintiff's stock in the T. Co., which prior thereto had been worth \$15 a share. *On demurrer, held*, an injury to the corporation, and not to the stockholders of the T. Co., and that plaintiff could not therefore sue in his own name to recover treble damages under the Sherman Law, giving a right to recover three-fold damages to any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by such act. *Ames v. American Tel. & Tel. Co.*, 166 F., 822.

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- 29. Same—Receivers May Sue for Injury to Corporation.**—Where a corporation is in the hands of a receiver, an action for injuries to the corporation should be prosecuted by him for the benefit of the corporation's creditors. *Ib.* 3—592
- 30. Injury to Corporation—Right of Stockholders to Sue for Damages.**—The Sherman Law, which provides that "any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any circuit court of the United States * * * and shall recover threefold the damages by him sustained," does not give a right of action to a stockholder or creditor of a corporation by reason of a combination or conspiracy alleged to have been in violation of the act and to have caused the bankruptcy of the corporation, resulting in the loss of plaintiff's stock or debt; the right of action in such case being in the corporation or its trustee in bankruptcy. *Loeb v. Eastman Kodak Co.*, 183 F., 709. 3—982
- 31. Suit by Stockholder.**—A stockholder of a corporation may sue in a Federal court to restrain another corporation which has obtained control of a majority of its stock from voting the same for the purpose of electing its own directors and eliminating competition between the two companies in alleged violation of law and to the irreparable injury of complainant as a stockholder, although the bill does not show a formal demand upon the directors to bring the suit as provided by equity rule 94, even conceding that the right of action is in fact that of the corporation, where the allegations prima facie negative collusion and fairly show that such demand would have been unavailing. *Bigelow v. Calumet & Hecla Mining Co.*, 155 F., 879. 3—308
- 32. Same—Special Injury to Complainant—A Bill by a Stockholder of a Corporation, who is also an officer and director, to enjoin the voting of stock by another corporation for the alleged purpose of changing the management in its own interest and creating an illegal monopoly to the detriment of the minority stockholders, shows such a special interest in complainant as distinct from the public and such threatened irreparable injury to his rights as to justify the granting of a preliminary injunction. *Ib.* 3—310**
- 33. Same—Preliminary Injunction—Grounds—The Bill of a Stockholder and supporting affidavits; held, to make a showing which entitled him to a preliminary injunction to restrain defendant from voting stock to change the officers and management of the corporation pending a hearing on the merits. *Ib.* 3—312**

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34. **Minority Stockholder can not Maintain, for Damages, under the Sherman Law.**—Minority stockholders can not maintain a suit in equity under the Sherman Law to recover threefold damages in the right of the corporation for a violation of the act. *Corey v. Independent Ice Co.*, 207 F., 461. 5—334
35. **Former Officer can not Maintain for Damages under the Sherman Law.**—Plaintiffs having no right of property in the offices of a corporation which they had previously held, the election of others thereto, even if an act unlawful, because done in pursuance and furtherance of a combination, conspiracy, or an attempt to monopolize, obnoxious to the Sherman Law, does not bring them within section 7 of that act giving a right of action to any person injured in his business or property by another by reason of anything declared to be unlawful by the act. *Corey v. Boston Ice Co.*, 207 F., 466. 5—342
36. **Single Stockholder can not Maintain, for Damages under the Sherman Law, nor Require Corporation to sue.**—A suit in equity by a single stockholder of a corporation against that and other corporations to require the latter to pay to the former threefold damages under section 7 of the Sherman Law, can not be maintained, nor, in such case, can there be a decree requiring the corporation of which plaintiff is a stockholder to sue the other corporations or permitting him to sue in its name and on its behalf. *Fleitmanna v. Welsbach Street Lighting Co.*, 240 U. S., 29. 5—481

3. *By parties to the combination.*

37. **Members of the Kansas City Live Stock Exchange can not enjoin the board of directors of that exchange, under the Sherman Law, from enforcing against them certain by-laws of the association claimed to be illegal and in violation of that act.** *Greer, Mills & Co. v. Stoller*, 77 F., 1. 1—630
38. **Where a member of a voluntary association has been suspended by the directors for nonpayment of a fine for violation of the by-laws, his action to be restored to the privileges of membership is founded upon the contract between himself and the association, which he must either accept in its entirety or repudiate. He does not occupy the position of a stranger injured by the acts of co-trespassers.** *Ib.* 1—630
39. **May Maintain Action to Set Aside Unlawful Transfer of Property.**—A minority stockholder in a corporation may maintain a suit in equity in behalf of himself and all other stockholders similarly situated to set aside an alleged unlawful transfer of the property of the corporation in pursuance of a conspiracy between its officers and the transferee in restraint of trade

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- and commerce, where it is alleged that the corporation, on demand, has refused to bring such suit. *Metcoalf v. Amer. School-Furniture Co.*, 108 F., 909. 2—75
40. **Same—Multifariousness.**—A bill for such relief which also seeks the recovery of treble damages under the Sherman Law is multifarious, since such damages are recoverable only in an action at law by the plaintiff as an individual, and not as a stockholder, while the equitable relief prayed for is in behalf of the corporation, and, if granted, would inure to the benefit of all the stockholders. *Id.* 2—75
41. **No Right of Action Against Trust to Recover Damages.**—Section 7 of the Sherman Law, giving to any person injured by any other person or corporation by reason of anything forbidden in the act the right to recover treble damages, does not authorize an action against an alleged trust corporation, by one who was a party to its organization and a stockholder therein, to recover damages resulting from the enforcement by defendant of rights given it by the alleged unlawful agreement. *Bishop v. Amer. Preservers Co.*, 105 F., 845. 2—51
42. **Member of a Combination in Violation of the Sherman Law May Maintain Suit to Enjoin Infringement of Patent Owned by Complainant.**—That a complainant is a member of a combination in violation of the Sherman Law does not give third persons the right to infringe a patent of which complainant is owner nor preclude complainant from maintaining a suit in equity to enjoin such infringement. *General Electric Co. v. Wise*, 119 F., 922. 2—205
43. **Recovery on Collateral Contract.**—Section 1, of the Sherman Law, does not invalidate, or prevent a recovery for the breach of a collateral contract for the manufacture and sale of goods by a member of a combination formed for the purpose of restraining interstate trade in such goods. *Hadley Dean Plate Glass Co. v. Highland Glass Co.*, 143 F., 242. 2—995

4. *By illegal combinations.*

44. **Can Not Enforce Illegal Contract.**—An illegal combination or trust can not resort to equity to enforce a contract or sale calculated to perpetuate the illegal features of the combination. *Amer. Biscuit & Mfg. Co. v. Klotz*, 44 F., 71. 1—2
45. **May Recover on Collateral Contracts the Price of Goods Sold.**—A violation of the Sherman Law, by the formation of a combination in restraint of trade, by which a penalty is incurred under the statute, does not preclude the company thus illegally formed from recovering on collateral contracts for the purchase price of goods. *Connolly v. Union Sewer Pipe Co.*, 184 U. S., 540. 2—118

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46. **Name.**—Nor does the illegality, at common law, of such a combination formed by corporations and persons in restraint of trade, preclude it from recovering the purchase price of goods sold in the course of business. *Id.* 2—119
47. **Illegality of Contract Defense to Action to Recover for Goods Sold.**—Plaintiff corporation formed an illegal combination of manufacturers and wholesalers of wall paper in the United States which constituted a restraint of interstate commerce and a violation of the Sherman law. Under the contract between plaintiff and the manufacturers, plaintiff was the nominal seller of all the wall paper manufactured by the combination, though it was actually purchased from various jobbers or mills within the combination. Defendants, wholesalers of wall paper, having been compelled to enter the combination and agree to purchase and sell wall paper in accordance with the monopolistic terms of the contract, purchased paper from various members of the combine, for which plaintiff brought suit. *Held* that, since plaintiff was bound to rely on the combination contract to show its capacity to sue, the illegality thereof constituted a defense to the action. *Continental Wall Paper Co. v. Voight & Sons Co.*, 148 F., 950. 3—60
48. **When Recovery can not be had.**—A recovery upon an account for goods sold and delivered by a corporation created to effectuate a combination of wall-paper manufacturers, intending and having the effect directly to restrain and monopolize trade and commerce, in violation of the Sherman Law, can not be had where the account is made up, within the knowledge of both buyer and seller, with direct reference to, and in execution of, the agreements which constitute the illegal combination. *Continental Wall Paper Co. v. Voight*, 212 U. S., 262. 3—513
49. **When Defendants Entitled to Judgment.**—Defendants in an action for goods sold and delivered are entitled to judgment on a demurrer admitting the allegations of a defense set up by way of answer, which in substance disclose that plaintiff is the selling agent of a combination of wall-paper manufacturers which offends against the Sherman Law; that, in carrying out such combination, defendants were virtually compelled to sign a jobber's agreement which, in effect, bound them to buy from the plaintiff all the wall paper needed in their business at certain fixed prices, and not to sell at lower prices or upon better terms than those at which plaintiff itself sells to dealers other than jobbers; that the goods in question were ordered pursuant to such agreement and at the prices fixed; that such prices were unreasonable;

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- and that all the transactions between the parties were in furtherance of the illegal combination. *Id.* 3—517
50. Vendee can Plead Illegality of Combination as Defense to Recovery of Purchase Price of Goods.—While a voluntary purchaser of goods at stipulated prices under a collateral, independent contract can not avoid payment merely on the ground that the vendor was an illegal combination (*Connolly v. Union Sewer Pipe Co.*, 184 U. S., 540), a vendee of goods purchased from an illegal agreement can plead such illegality as a defense. *Id.* 3—513
51. Same.—The court can not lend its aid in any way to a party seeking to realize the fruits of an illegal contract, and, while this may at times result in relieving a purchaser from paying for what he has had, public policy demands that the court deny its aid to carry out illegal contracts without regard to individual interests or knowledge of the parties. *Id.* 3—513
52. Same—Effect of Refusal.—The refusal of judicial aid to enforce illegal contracts tends to reduce such transactions. *Id.* 3—514

5. By the United States.

53. The right to bring suits in equity for violations of the Sherman Law is vested in the district attorneys of the United States. *Pidcock v. Harrington*, 64 F., 821. 1—377
54. The right to bring suits for injunction under section 4 of the act is limited to suits instituted on behalf of the Government. *Greer, Mills & Co. v. Stoller*, 77 F., 1. 1—620
55. Same.—The only party entitled to maintain a bill of injunction for an alleged breach of the Sherman Law is the United States, by its district attorney, on the authority of the Attorney General. *Gulf, C. & S. F. Ry. Co. v. Miami S. S. Co.*, 86 F., 407. 1—823
- [A private party may now maintain suit for an injunction under section 16 of the Clayton Law.]
56. The intention of the Sherman Law was to limit direct proceedings in equity to prevent and restrain such violations of that law as cause injury to the general public, or to all alike, merely from the suppression of competition in trade and commerce among the several States and with foreign nations, to those instituted in the name of the United States, under section 4 of the law, by district attorneys of the United States, acting under the direction of the Attorney General; thus securing the enforcement of the act, so far as such direct proceedings in equity are concerned, according to some uniform plan, operative throughout the entire country. *Minnesota v. Northern Securities Co.*, 194 U. S., 48. 2—533

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6. *By States.*

57. A State can not maintain an action in equity to restrain a corporation from violating the provisions of the act on the ground that such violations by decreasing competition would depreciate the value of its public lands and enhance the cost of maintaining its public institutions, the damages resulting from such violations being remote and indirect and not such direct actual injury as is provided for in section 7 of the law. *Minnesota v. Northern Securities Co.*, 194 U. S., 48. 2—533
58. Municipal Corporation May Maintain Action for Damages Under Section 7.—A municipal corporation engaged in operating water, lighting, or similar plants, from which a revenue is derived, is, in relation to such matters, a business corporation, and may maintain an action under section 7 of the Sherman Law for injury to its "business" by reason of a combination or conspiracy in restraint of interstate trade or commerce made unlawful by such law. *City of Atlanta v. Chattanooga Foundry & Pipe Works*, 127 F., 23. 2—299

7. *At common law—Damages.*

59. Action for Damages Must Show that Plaintiff is Engaged in Interstate Commerce.—An action to recover damages alleged to have been caused by acts done in violation of the Sherman Law can not be maintained when the complaint fails to show that plaintiff is engaged in interstate commerce, and no such showing is made by an averment that plaintiff is engaged in "manufacturing watch cases throughout all the States of the United States and in foreign countries." *Dueber Watch Case Mfg. Co. v. Howard Watch, etc., Co.*, 55 F., 851. 1—178
60. Same—Must Show Intention to Control Market, or a Large Portion of It.—An agreement by a number of manufacturers and dealers in watch cases to fix an arbitrary price on their goods, and not to sell the same to any persons buying watch cases of plaintiff, is not in violation of the statute; and a complaint which, on the last analysis, avers only these facts, without averring the absorption or the intention to absorb or control the entire market, or a large part thereof, states no cause of action. *Ib.* 1—182
61. Action Alleged to be in Violation of the Statutes of a State and of the United States Held to be Founded upon the Sherman Law.—An action brought in the United States Circuit Court for southern New York by a manufacturing company against competitors in various States, alleging the formation of a combination and an attempt to create a monopoly, "in violation of the statutes of this State and the United States," whereby plaintiff's business was injured, and alleging the

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formation of the combination on and prior to November 16, 1887, but that, after the passage of the Sherman Law, defendants ratified, renewed, and confirmed their previous contracts, combinations, etc., and judgment being demanded for treble damages "under and by virtue of the statute." *Held*, that the action must be deemed to be founded upon the Sherman Law. *Dueber Watch Case Mfg. Co. v. Howard Watch, etc., Co.*, 66 F., 637. 1—421

62. *Same*—A Cause of Action not Stated.—Where, in the above action, complaint alleged that previous to November 16, 1887, it sold all its goods to a great number of dealers "throughout the United States and Canada"; that prior to that date defendants had agreed with each other to maintain arbitrary and fixed prices for their watch cases; that, for the purpose of compelling plaintiff to join with them therein, defendants on said date mutually agreed that they would not thereafter sell any goods to persons who bought or sold goods manufactured by plaintiff; that they caused notice thereof to be served upon the many dealers in such goods throughout the United States and Canada, who had formerly dealt in plaintiff's goods, whereupon many of such dealers withdrew their patronage from plaintiff; that after the passage of the Sherman Law defendants ratified, renewed, and confirmed their previous agreements, and served notice of such ratification upon all said dealers in plaintiff's goods, whereby said dealers were compelled to refuse to purchase plaintiff's watch cases. *Held*, that the complaint failed to state a cause of action under the statutes. *Ib.* 1—429
63. *Same*.—*Held*, that no monopolizing or combination to monopolize interstate commerce, contrary to the second section of the act, was shown, for the reason that the allegations did not preclude the inference that each defendant may have sold his entire product in the State where it was manufactured. *Ib.* 1—429
64. *Same*.—*Held* that the contracts did not produce an unlawful restraint of trade, under the first section, because the combination and agreement to fix arbitrary prices did not appear to include all manufacturers of watchcases, but was only a partial restraint in respect to an article not of prime necessity, and therefore came within the recognized limits of lawful contracts. *Ib.* 1—432
65. *Same*.—*Held*, that the further agreement not to sell to customers of plaintiff was a lawful means of enlarging and protecting the business of the defendants. *Ib.* 1—432
- Shipman, Cir. J., concurring, on the ground—*
66. That the acts of the defendants, whether viewed as an attempt to create a monopoly or as a contract in restraint of trade,

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were not shown to concern interstate commerce because there were no allegations showing the residence of any dealers who withdrew their patronage from complainant, and it therefore did not directly appear that any of them resided outside of the State where plaintiff's goods were manufactured. *Ib.* 1—437

Wallace, Cir. J., dissenting, on the ground—

67. That the allegations were sufficient to show that the attempts to monopolize and restrain did operate upon interstate commerce. *Ib.* 1—437

68. That, while the contracts might not be unlawful in themselves, yet the purpose for which they were alleged to be made, namely, to compel plaintiff to join in the agreement for fixing arbitrary prices, and to injure and destroy its business if it refused to do so, was oppressive and unjust, and rendered the acts of defendants unlawful under both sections of the statute. *Ib.* 1—442

69. By Direct Action.—A recovery of the treble damages authorized by the Sherman Law, section 7, in case of injury sustained by violation of the act, can be had only by direct action, and not by way of set-off in an action brought for the price of goods by a company illegally formed in violation of the act—especially when the State practice does not permit the set-off of unliquidated damages. *Connolly v. Union Sewer Pipe Co.*, 184 U. S., 540. 2—118

70. Municipal Corporation May Maintain Action for Damages Under Section 7.—A municipal corporation engaged in operating water, lighting, or similar plants, from which a revenue is derived, is, in relation to such matters, a business corporation, and may maintain an action under section 7 of the Sherman Law, for injury to its "business" by reason of a combination or conspiracy in restraint of interstate trade or commerce made unlawful by such act. *City of Atlanta v. Chattanooga Foundry & Pipe Works*, 127 F., 23. 2—209

71. Statutory Limitations Governed by the Laws of the State in which Action is Brought.—An action under section 7 of the Sherman Law, providing that "any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any circuit court of the United States, * * * and shall recover threefold the damages by him sustained," is not an action for a penalty or forfeiture, within section 1047, Revised Statutes, prescribing a limitation of five years for a "suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States," but one for the enforcement of a civil remedy for a private injury, compensatory in its

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purpose and effect, the recovery permitted in excess of damages actually sustained being in the nature of exemplary damages, which does not change the nature of the action, and such action is governed as to limitation by the statutes of the State in which it is brought. *City of Atlanta v. Chattanooga Foundry and Pipe Co.*, 101 F., 900. 2—11

Affirmed by Circuit Court of Appeals, 127 F., 23 (2—199).

The judgment of the circuit court was, however, reversed, but upon other grounds—a construction of section 4470, Tennessee Code.

Affirmed by Supreme Court (203 U. S., 390).

72. Same—Every Member of the Combination Liable for Damages.—

Every member of an illegal combination in restraint of interstate trade or commerce in violation of the Sherman Law is liable for the damages resulting to the business or property of a plaintiff by reason of such combination, and it is immaterial that there were no direct contract relations between plaintiff and defendant. *City of Atlanta v. Chattanooga Foundry and Pipe Works*, 127 F., 23. 2—299

73. Same—Measure of Recovery for Injury to Business.—If the effect of an illegal combination between manufacturers to prevent competition in the sale of a commodity which is a subject of interstate commerce be to enhance the price of such commodity to a purchaser, he is entitled to recover the difference between the price paid and the reasonable price under natural competitive conditions, as an injury to his business, whether such business is interstate or not, provided the transaction by which the purchase was made was interstate. *Ib.* 2—305

74. Conspiring to Injure Another in Business—Mailing Printed Circulars.—The action of an association of manufacturers in adopting a resolution denouncing a dealer in the product they manufactured, who bought and shipped such product to customers in other States and foreign countries, and in printing such resolution in circulars, and mailing the same to other manufacturers and customers of the dealer, whereby his business was injured, constituted an illegal combination or conspiracy in restraint of interstate and foreign commerce, and gives the person injured a right of action in a circuit court of the United States, under the Sherman Law, to recover the damages sustained. *Gibbs v. McNeeley*, 102 F., 594. 2—25

Verdict for defendant directed, 107 F., 210 (2—71), but

Reversed by Circuit Court of Appeals, 118 F., 120 (2—194).

75. Complaint Fatally Defective where it Fails to Show that Plaintiff Suffered Damage.—A complaint in a civil action based on the Sherman Law, alleging an illegal combination by

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defendants in restraint of trade, is fatally defective where it falls to show that plaintiff has suffered damage by reason of such combination. *Ib.* 2—28

76. Treble damages are recoverable under the Sherman Law, only in an action at law by the plaintiff as an individual and not as a stockholder in the corporation violating that act. *Met-calf v. Amer. School Furniture Co.*, 108 F., 909. 2—75
77. Nature of Action for Damages.—An action by a shipper, authorized by the Sherman Law, to recover treble damages to his business and property by reason of a conspiracy and combination by interstate carriers to charge excessive and unlawful rates for the shipment of coal from the mines to tide water, was an action at law as to which the parties were entitled to a jury trial. *Meeker v. Lehigh Valley R. R. Co.*, 162 F., 357. 3—385
78. Where Manufacturer Refused to Sell because Complainant was not a Member of Trust Association.—A dealer in tiles, mantels, and grates in San Francisco, to whom a manufacturer in another State refused to sell tiles on the sole ground that he was not a member of an association to which he belonged, which association sought to control the output and regulate the prices thereof in California, and adjoining States, *Held*, entitled to damages under section 7 of the Sherman Law. *Montague v. Lowry*, 115 F., 27. 2—112
- Affirmed, 193 U. S., 38 (2—327).
See also Bishop v. Amer. Preservers Co., 105 F., 845. 2—51
79. Right of Action for Damages under Sherman Act, a Civil Remedy.—The remedy given by the Sherman Law, authorizing an action for threefold damages, sustained by any person injured in consequence of any act forbidden or declared to be unlawful by the law, is a civil remedy for private injury, compensatory in its purpose and effect, and the threefold damages recoverable are exemplary damages. *Strout v. United Shoe Mach. Co.*, 195 F., 317. 4—532
80. Cause of Action Must be Complete when Suit for Damages is Brought.—To give a private right of action under section 7 of the Sherman Law, for treble damages for injury done to plaintiff's business through a combination by defendants in restraint of trade, the cause of action must be complete when suit is brought; the Government alone having power to check future contemplated unlawful acts, and hence, in an action against several defendants, plaintiff is not entitled to bring in as defendants corporations which were organized after the action was brought. *Locker v. American Tobacco Co.*, 197 F., 496. 4—613
81. By Trustee of Corporation in Dissolution—Damages Not Recoverable for Acts Committed After Date of Appointment of
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Trustee.—Where a trustee was appointed for a corporation in dissolution proceedings February 17, 1905, and a substituted trustee thereafter sued defendants, who controlled the corporation, for alleged injuries to its business, charging that they so managed the corporation as to destroy its competition with another corporation, and refused to permit it to do business, plaintiff could not recover for any of the alleged acts committed after the date of the appointment of a trustee, since from that time defendants were not in control of the company. *Strout v. United Shoe Mach. Co.*, 208 F., 650, 651.

4—550

- 82. To Sustain Action under Section 7 of Sherman Law, Coöperation of Two Defendants Must be Shown.**—To sustain an action under section 7 of the Sherman Law, coöperation by at least two of the defendants to cause the damage complained of must be shown. *Virtue v. Creamery Package Mfg. Co., et al.*, 227 U. S., 32.

4—829

- 83. Same—Proof of Malicious Prosecution on Part of Only One Defendant Can Not Sustain Action under Section 7.**—An action under section 7 of the Sherman Law based on a combination between the defendants can not be sustained by proof of malicious prosecution on the part of only one of the defendants. *Ib.*

4—835

- 84. For Damages—Sufficiency of Declaration.**—A declaration for civil damages for violation of the Sherman Law, alleged that defendant was, and since its organization had been, an illegal combination in restraint of trade and a monopoly, that each of its leases of machinery, copies of which were annexed, was a contract in restraint of trade and commerce, and that defendant by a created scheme and conspiracy monopolized the entire trade in shoe machinery and had excluded plaintiff from participation therein. It also charged that by reason of such conspiracy and monopoly defendant had prevented plaintiff from selling shoe machinery covered by plaintiff's patents and had rendered the same valueless, etc. *Held*, that the complaint was not demurrable for want of facts. *Culley v. United Shoe Mach. Co.*, 202 F., 601.

4—560

- 85. For Damages—Sufficiency of Declaration.**—A declaration for civil damages for violating the Sherman Law, alleged that complainant trustee had succeeded to all the rights of a metal shoe fastening company owning patents on shoe machinery, which was incorporated to manufacture and sell to the trade, that defendant shoe machinery company was organized and continued to exist to maintain a monopoly of the shoe machinery business, that it had acquired such monopoly, and, having obtained a majority of the stock of plaintiff's corporation, refused to permit it to do business in order to

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prevent competition with other machines controlled by it, permitted the corporation's property to remain idle and become wasted until the patents were about to expire and had become practically worthless, and that the corporation had been greatly injured in its business by reason thereof. *Held* to state a sufficient cause of action to withstand a demurrer. *Strout v. United Shoe Mach. Co.*, 202 F., 604.

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8. Equity—Injunctions, etc.

86. Private Individuals no Remedy in Equity under the Statute.—

The Sherman Law confers no right upon private individuals to sue in equity for the restraint of acts forbidden by that statute. *Pidcock v. Harrington*, 64 F., 821.

1—377

87. Private Party no Remedy in Equity.—The Sherman Law does

not authorize a court of equity to entertain a bill by a private party to enforce its provisions. *Southern Ind. Exp. Co. v. U. S. Exp. Co.*, 88 F., 659.

1—862

88. The right to bring suits for injunction under section 4 of the

Sherman Law is limited to suits instituted on behalf of the Government. *Greer, Mills & Co. v. Stoller*, 77 F., 1.

1—620

89. The only party entitled to maintain a bill of injunction for an alleged breach of the Sherman Law is the United States, by its district attorney, on the authority of the Attorney General. *Gulf C. & S. F. Ry. Co. v. Miami S. S. Co.*, 86 F., 407.

1—824

[A private party may now maintain a suit for injunction under section 16 of the Clayton Law.]

90. Suit Enjoining Infringement Maintainable by Owner of Patent

Though Member of Illegal Combination.—Complainant, though a member of a combination in violation of the Sherman Law, can maintain a suit in equity to enjoin an infringement of a patent owned by him. *General Electric Co. v. Wise*, 119 F., 922.

2—205

91. Maliciously Interfering with Contracts.—An actionable wrong

is committed by one who maliciously interferes with a contract between two parties and induces one of them to break the contract to the injury of the other, and in the absence of an adequate remedy at law equitable relief will be granted; but *held*, in this case, that plaintiffs were not entitled to relief as the contract under which they claimed was invalid. *Dr. Miles Medical Co. v. J. D. Park & Sons Co.*, 220 U. S., 394.

4—19, 32

92. The Purpose of a Suit in Equity by the United States, under

the Sherman Law, is to Prevent Future Violations.—The purpose of a suit in equity by the United States to prevent and restrain violations of the Sherman Law, brought under section 4 of the act, is to restrain and prevent future violations

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through the power of injunction; but where the evil effects of past undue restraint or monopoly of trade continue to be effective and harmful, and if to prevent continuance of such wrongs a dissolution of the unlawful combination is necessary to make the relief effective, the court has power to decree such dissolution; but, unless so necessary, such power will not be exercised. *U. S. v. U. S. Steel Corporation*, 223 F., 59. 6—8

9. *Purchases from, or services rendered by, illegal corporations.*

93. **Can Not Retain Goods and Recover Price Paid.**—One purchasing liquors from an illegal combination of distillers, which controls the market and prices, though impelled thereto by business needs and policy, enters into the contract voluntarily, and can not retain the goods, and recover the price paid, or any part of it, either on the ground that the combination was illegal or the price excessive. 77 Fed., 700, affirmed. *Denny v. McNulta*, 86 F., 825. 1—855

94. **Rebate vouchers issued by a distilling company to customers, by which it promised to refund a certain sum per gallon on their purchases at the end of six months, on condition of their purchasing exclusively from the company during that time, can not be enforced, either at law or in equity, where the condition has not been performed, though such condition be illegal, as in restraint of trade, there being no other consideration for the promise.** 77 Fed., 700, affirmed. *Id.* 1—859

95. **Must Pay Reasonable Value of Services—Towage.**—One who requests and accepts the services of a tug for towage purposes can not escape paying the reasonable value of the services rendered on the ground that the tug owners are members of an association which is illegal under the Sherman Law, relating to trusts and monopolies. *The Charles E. Wiswall*, 74 F., 802. 1—608

Affirmed, 86 F., 671 (1—850).

10. *Patents—Actions for infringement.*

96. **Third Party can not Enjoin Combination from Bringing Suit for Infringement of its Patents.**—The fact that a corporation owning letters patent upon a particular kind of machinery has entered into a combination with other manufacturers thereof to secure a monopoly in its manufacture and sale, and to that end has acquired all the rights of other manufacturers for the exclusive sale and manufacture of such machines under patents, will not entitle a stranger to the combination to enjoin the corporation from bringing any suits for infringement against him or his customers. *Stratt v. National Harrow Co.*, 51 F., 819. 1—52

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See also *National Folding Box & Paper Co. v. Robertson*, 99 F., 985 (2—4); and *Otis Elevator Co. v. Geiger*, 107 F., 131 (2—66).

97. Owner of Patent, though Member of Illegal Combination, can Maintain Action for Infringement.—That a complainant is a member of a combination in violation of the Sherman Law, does not give third persons the right to infringe a patent of which he, the complainant, is owner, nor preclude complainant from maintaining a suit in equity to enjoin such infringement. *General Electric Co. v. Wise*, 119 F., 922.

2—205

98. Combination Organized to Receive Assignments of Patents can not Maintain Action for Infringement against Assignor.—A combination among manufacturers of spring-tooth harrows, whereby a corporation, organized for the purpose, becomes the assignee of all patents owned by the various manufacturers, and executes licenses to them, so as to control the entire business and enhance prices, is void both as to the assignments and licenses, so that the corporation can not maintain a suit against one of its assignors who violates the agreement, for infringement. *National Harrow Co. v. Hench*, 84 F., 226.

1—746

See also *National Harrow Co. v. Quick*, 67 F., 130 (1—443).

99. To Enforce License Restriction, is One Under Patent Laws.—An action by the patentee of a rotary mimeograph sold under a license restriction that such machine should be used only with the stencil paper, ink, and other supplies made by the patentee, none of which are patented, against one selling ink to the purchaser with expectation that it would be used in connection with such mimeograph, is one arising under the patent laws, of which a Federal court has jurisdiction. *Henry v. A. B. Dick Co.*, 56 L. Ed., 645.

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11. Venue and Limitations.

100. Action by a Chancery Receiver—Jurisdiction in which Suit May Be Brought.—A mere chancery receiver, having no title to the assets or to the claim sued on, can not maintain an action in the Federal courts in a jurisdiction other than that in which he was appointed. *Strout v. United Shoe Machinery Co.*, 195 F., 319.

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101. Same—Receiver of Corporation May Sue in a Foreign Jurisdiction.—A receiver of a corporation who is a successor in title of the corporation may sue in a foreign jurisdiction. *Ib.*

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102. Under the Clayton Law, Suit May be Brought in Any District in Which an Agent May be Found Transacting Business.—The Clayton Law, in providing that a suit for violation of the

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antitrust laws may be brought in any district in which the defendant resides, or is found, or has an agent, and that, if a corporation, suit may be brought not only in the district whereof it is an inhabitant but also in any district wherein it may be found or transacts business, and that in such cases process may be served in the district of which it is an inhabitant, does not authorize a suit against a corporation in any district in which an agent may be found, unless he is there in his representative capacity, and the defendant is more or less regularly, through him, transacting business therein. *Frey & Son v. Cudahy Packing Co.*, 228 F., 213.

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103. Same—Under the Clayton Law, Defendant Could be Sued in Maryland, Having Had Therein Agents Soliciting and Filling Orders from a Storage House in Such State.—Defendant, a foreign packing company, had agents soliciting orders for its products in Maryland, chiefly from jobbing houses, and for the purpose of promptly filling such orders kept a supply of its goods with a storage company, which delivered the same on orders from defendant's officers in other States. *Held*, that defendant was transacting business in Maryland, within the meaning of section 12 of the Clayton Law; that a suit for a violation of the antitrust laws could be maintained against it in that district, and that it might be brought into court by process served upon it in the State of its incorporation, as provided in said action. *Ib.*

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104. Under Section 12 of the Clayton Law, a New York Corporation, Doing Business in Georgia, May be Sued There.—The Sherman Law, section 7, authorizes action in any district court in a district in which the defendant resides or is found. The Clayton Law, section 12, authorizes suits not only in the judicial district whereof defendant is an inhabitant but also in any district wherein it may be found or transacts business. The defendant, a New York corporation, had its principal place of business and domicile in New York, but it also carried on business in Georgia, though it had no agent in such State on whom process could be served. *Held*, that under the statute defendant might be sued in the district court for Georgia, service being had on defendant at its domicile. *Southern Photo Material Co. v. Eastman Kodak Co.*, 234 F., 957.

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105. By Trustee of Corporation in Dissolution, Must be Brought Within Six Years After Commission of Wrongful Acts.—A trustee of a corporation, appointed in dissolution proceedings, could not recover damages alleged to have resulted to its business from a conspiracy of those previously in control, preventing the corporation from doing business and using its patents, where the acts charged were committed more than six years prior

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to the date of the suit. *Strout v. United Shoe Machinery Co.*, 208 F., 651. 4—551

106. Period of Limitation Does Not Begin to Run Until Discovery of Conspiracy and Cause of Action.—Where plaintiff sued defendants for conspiracy, consisting of an alleged unlawful agreement to injure plaintiff in its business, in violation of the Sherman Law, the period of limitation did not begin to run until plaintiff discovered the existence of the conspiracy and its cause of action. *American Tobacco Co. v. People's Tobacco Co.*, 204 F., 61. 5—142

12. Survival and assignability.

107. For Damages, Survives Against Estate of Decedent, if He Secured Some Benefit at Expense of Plaintiff.—Where recovery for the results of a monopolistic conspiracy is sought under section 7 of the Sherman Law, the action will survive against the estate of decedent, in case he secured some benefit at the expense of the plaintiff. *United Copper Sec. Co. v. Amalgamated Copper Co.*, 232 F., 578. 6—449
108. For Damages, Under Sherman Law, Survives Death of Person Injured.—An action for treble damages, brought under Sherman Law, section 7, based on combinations in restraint of trade, survives the death of the person or dissolution of a corporation injured, being an action for injuries to property, which might have been assigned. *Imperial Film Exchange v. General Film Co.*, 244 F., 987. 6—1046
109. Same—When Local Statutes in Respect to Abatement Have no Application.—Local State statutes in respect to abatement and survival of actions have no application to an action depending solely upon a statute of the United States. *Ib.* 6—1045
110. Same—When no Statute Regulates Survival, Common Law Must be Looked To.—Where there is no Federal statute, either preventing or permitting the survival of an action depending solely on a Federal law, the rules of common law, which include judicial opinions, even the most modern, on points not regulated by statute, must be looked to, to determine whether the action survives. *Ib.* 6—1045
111. Right of, for Property Injuries, is Assignable.—A right of action for property injuries, based on a violation of the Sherman Law, and brought under section 7, is assignable; the action being a civil action, which could be assigned at common law. *United Copper Sec. Co. v. Amalgamated Copper Co.*, 232 F., 578. 6—449
112. Right of, for Damages, Under Sherman Law, May be Assigned.—An action for treble damages, brought under Sherman Law, section 7, based on combinations in restraint of trade, being an action for injuries to property, may be assigned, the mod-

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ern rule being in favor of assignment of actions, and tort actions for injuries to property which were assignable surviving. *Imperial Film Exchange v. General Film Co.*, 244 F., 987. 6—1046

113. **Same—When Trustee May be Substituted as Plaintiff.**—Where, on dissolution of a corporation, the State court appointed a trustee, who was in all respects the equivalent of an assignee, such trustee may be substituted as plaintiff in an action previously instituted by the corporation to recover treble damages under Sherman Law, section 7, for injuries occasioned by a violation of the law. *Ib.* 6—1047

13. Generally.

114. **What Must Be Shown.**—To vitiate a combination, such as the Sherman Law condemns, it need not be shown that the combination, in fact, results, or will result, in a total suppression of trade or in a complete monopoly, but it is only essential to show that by its necessary operation it tends to restrain interstate or international trade or commerce, or tends to create a monopoly in such trade or commerce, and to deprive the public of the advantages that flow from free competition. *Northern Securities Co. v. United States*, 193 U. S., 197. (Harlan, Brown, McKenna, Day.) 2—340
115. **Same.**—In order to maintain this suit the Government is not obliged to show that the agreement in question was entered into for the purpose of restraining trade or commerce, if such restraint is its necessary effect. *U. S. v. Trans-Mo. Ft. Assn.*, 186 U. S., 290. 1—649

See also PLEADING AND PRACTICE.

116. **A suit brought by the Attorney General of the United States to declare the Northern Securities Co. combination illegal under the Sherman Law is not an interference with the control of the States under which the railroad companies and the holding company were, respectively, organized.** *Northern Securities Co. v. United States*, 193 U. S., 197 (Brewer concurring). 2—342
117. **No Right of Action Growing Out of Suits against Plaintiff Which Have Not Been Decided.**—The Sherman Law, which gives a right of action to any person injured by acts in violation of its provisions, does not authorize suit where the only cause of action is the bringing of two suits which have not been decided. *Bishop v. Amer. Preservers' Co.*, 51 F., 272. 1—49
- See also INDICTMENTS.
118. **Receiver May Maintain Action for Injuries.**—Where a corporation is in the hands of a receiver, an action for injuries to the corporation should be prosecuted by him for the benefit of the corporation's creditors. *Ames v. American Tel. & Tel. Co.*, 186 F., 822. 3—592

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119. **Liability of Members for Unlawful Acts.**—A clause in the constitution of a labor organization which provides that certain of its officers "shall use all the means in their power" to bring non-union shops into the trade, does not necessarily imply that these officers shall use other than lawful means, and the fact alone that a member contributes money to the support of the organization does not make him responsible as a principal for unlawful acts of the officers or their agents, but in order that his contributions shall have such effect something more must be shown, as that unlawful means had been so frequently used with the express or tacit approval of the association that its agents were warranted in assuming that they might use such means, and that the association and its individual members would approve or tolerate such use, whenever the end sought to be attained might be best attained thereby. *Lawlor v. Loewe*, 187 F., 526. 4—269
120. **For Damages Under the Anti-Trust and Interstate Commerce Acts.**—Where a count in a complaint against an interstate carrier alleged a discrimination in rates against plaintiff, in that defendant charged plaintiff the full tariff rates and permitted plaintiff's competitors by a device to transport their similar products at a lower rate, it stated a cause of action for violating the Interstate Commerce Act, prohibiting discrimination, and was therefore not demurrable, though it also insufficiently attempted to allege a combination or conspiracy, on defendant's part, with certain other railroads to restrain trade, and to recover treble damages under the Sherman Law. *American Union Coal Co. v. Penna R. R. Co.*, 150 F., 279. 3—314
121. **In Action for Damages, Immaterial whether the acts complained of were themselves acts of Interstate Commerce.**—In an action for damages caused to plaintiff by a combination in restraint of interstate commerce, it is immaterial whether the acts in pursuance of the combination which injured plaintiff were themselves acts of interstate commerce; the illegality arising from the project or plan as a whole. *Mariencelli, Lim. v. United Booking Offices*, 227 F., 170. 5—951
122. **In action for injuries resulting from conspiracy, immaterial that person injured was not engaged in interstate commerce.**—In an action under section 7 of the Sherman Law, for injuries resulting from a conspiracy to perfect a monopoly, it is immaterial that the person injured was not engaged in interstate commerce; it being sufficient if such person was directly affected. *United Copper Sec. Co. v. Amalgamated Copper Co.*, 232 F., 577. 6—477
123. **In action for damages, the fact that plaintiff only desired lasts for his own use, did not deprive restraint of its interstate character, etc.**—The fact that plaintiff was a citizen of

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Massachusetts, manufacturing rubber footwear in that State, and was not a dealer in lasts, and only desired to buy lasts for his own use, and not for resale, did not deprive the restraint of trade, so far as it affected plaintiff, of the interstate character necessary to bring it within the Sherman Law, as the restraint or control obtained by the rubber company was a single thing, not confined to Massachusetts, and restricted the trade of the last manufacturers with everybody, including citizens of their own State. *Hood Rubber Co. v. U. S. Rubber Co.*, 229 F., 586. 6—427

124. **Action for Damages May be Maintained Under the Clayton Law, Although Federal Trade Commission Has Taken no Action.**—An action may sometimes be maintained in a Federal district court to recover damages for alleged price discriminations by defendant against plaintiff in violation of the Clayton Law, although the Federal Trade Commission has taken no action in the premises. *Frey & Son v. Cudahy Packing Co.*, 232 F., 640. 6—384

125. **Same—In Action for Damages, All Parties Privy to the General Plan, Properly Joined.**—In an action for damages caused by such combination, all of the parties privy to the general plan were properly joined, though the execution of different parts of the plan was confined to individuals. *Mariennell (Ltd.) v. United Booking Offices*, 227 F., 171. 5—953

126. **For Damages Under Sherman Law, Sounds in Tort.**—An action under the Sherman Law, section 7, for treble damages for injuries to person or property by reason of unlawful monopoly, is one for a personal wrong, and sounds in tort. *Imperial Film Exchange v. General Film Co.*, 244 F., 987. 6—1045

127. **No Rule that Civil Suit Shall Await Trial of Criminal Action.**—There is no rule that civil suits brought under the Sherman Law to dissolve the combination must await the trial of criminal actions against the same defendants, and whether the trial of the civil action shall be delayed because some of the defendants refuse to testify as witnesses for other defendants is a matter in the discretion of the trial court, and in the absence of abuse, not reviewable. *Standard Sanitary Mfg. Co. v. U. S.*, 226 U. S., 52. 4—651

128. **Same—Continuance of, Within Discretion of Trial Court.**—The trial court did not abuse its discretion in denying a motion by defendants in a civil suit brought by the Government under the Sherman Law, for an enlargement of time to take testimony, based upon the ground that they had been prevented by the action of the Government in instituting criminal proceedings from properly presenting their defense, in that the Government apprehending that the witnesses for the defense were called to give them immunity from the criminal prosecution then pending, notified them that if they testified

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they would do so at their peril, as immunity could only be claimed by witnesses for the Government, whereupon, on the advice of counsel, they refused to testify, leaving the defendants without the benefit of the evidence which they could have given. 57 L. Ed., 107. 4—651

129. *Quære*, the question not discussed or decided, whether an original action can be maintained in the State courts for injunction and damages under the Sherman Law. *Straus v. American Pub. Ass'n*, 231 U. S., 237. 4—856

II. DEFENSES.

1. Indefiniteness, duplicity.

130. *Indefiniteness*.—In an action by a corporation for the infringement of elevator patents, an answer alleging as a defense that the plaintiff is an unlawful combination in restraint of trade and in violation of the Sherman Law but which fails to state who are in the combination in the agreement characterized as unlawful, and does not disclose fully and in detail that the combination was entered into after the act took effect, and all the facts necessary to show its illegality, is insufficient for indefiniteness. *Otis Elevator Co. v. Geiger*, 107 F., 131. 2—66
131. *Duplicity*.—A declaration in an action brought under section 7 of the Sherman Law to recover damages for a violation of section 1 of the act, which alleges in a single count that defendant entered into a "contract, combination, and conspiracy" in restraint of trade, is bad for duplicity. *Rice v. Standard Oil Co.*, 134 F., 464. 2—633
132. *Same*.—The Sherman Law makes a distinction between a contract and a combination or conspiracy in restraint of trade. *Ib.* 2—634

MULTIFARIOUSNESS. See PLEADING AND PRACTICE.

133. *When General Averment of Injury Insufficient*.—Where, in an action by a stockholder of a corporation against defendant, the only injury alleged was to the corporation, a general averment that plaintiff had been greatly injured in his business and property was insufficient as an allegation of injury to plaintiff distinct from that to the corporation. *Ames v. American Tel. & Tel. Co.*, 166 F., 822. 3—588

2. Contract in violation of Anti-Trust Act, or of an act of Congress.

134. The defense that a contract is in violation of the Sherman Law, which makes illegal every contract violative of its provisions, may be set up by a private individual when sued

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thereon, and, if proved, constitutes a good defense to the action. *Bement v. National Harrow Co.*, 186 U. S., 70.

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135. Same.—Anyone sued upon a contract may set up as a defense that it is a violation of an act of Congress. *Ib.* 2—169

3. *Illegal combination—Purchases from, services.*

136. Payment for Services can not be Avoided because Performed by a Trust—Towage.—One who requests and accepts the services of a tug for towage purposes can not escape paying the reasonable value of the services rendered on the ground that the tug owners are members of an association which is illegal under the Sherman Law, relating to trusts and monopolies. *The Charles E. Wiswall*, 74 F., 802. 1—608

Affirmed, 86 F., 671 (1—850).

137. Payment of Note for Goods Purchased can not be Avoided because Bought from a Trust.—A note made for a balance due on goods bought from a corporation can not be avoided merely because the latter is a trust organized to create and carry out restrictions in trade contrary to the Sherman Law, as that only covers contracts which are themselves in restraint of trade, and does not affect those which "merely indirectly, remotely, incidentally, or collaterally regulate, to a greater or less degree, interstate commerce between the States." *Union Sewer-Pipe Co. v. Connolly*, 99 F., 354. 2—1

Affirmed, 184 U. S., 540 (2—118).

See also *Dennehy v. McNulta*, 86 F., 825 (1—885).

138. A contract for the sale of merchandise is not rendered illegal by the fact that the selling corporation is a trust or monopoly organized in violation of law, either Federal or State; the contract of sale being collateral and having no direct relation to the unlawful scheme or combination. *Chicago Wall Paper Mills v. General Paper Co.*, 147 F., 491.

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See also *Continental Wall Paper Co. v. Lewis Voight & Sons Co.*, 148 F., 940 (3—44); 212 U. S., 227 (3—480).

139. Recovery on Collateral Contract by Member of Combination in Restraint of Interstate Trade.—The Sherman Law, section 1, does not invalidate or prevent a recovery for the breach of a collateral contract for the manufacture and sale of goods by a member of a combination formed for the purpose of restraining interstate trade in such goods. *Hadley Dean Plate Glass Co. v. Highland Glass Co.*, 143 F., 242. 2—995

140. The Power to Dissolve a Combination Inconsistent with Right of Individual to Assert Its Illegality as Defense to a Contract.—The power given by the Sherman Law to the Attorney General to dissolve a corporation or combination as violative of that

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act is inconsistent with the right of an individual to assert as a defense to a contract on which he is otherwise legally liable that the other party has no legal existence in contemplation of that act. *Wilder Mfg. Co. v. Corn Products Ref. Co.*, 236 U. S., 174. 6—554

141. Same—Party Can Not Assert as Defense to a Suit for Money Fact that Plaintiff Was Organized in Violation of Sherman Law.—In *Continental Wall Paper Co. v. Voight*, 212 U. S., 227, the contract involved was not held illegal because a party thereto was an illegal combination under the Sherman Law, but upon elements of illegality inhering in the contract itself. In this case, *held* that a party can not assert as a defense to a suit for money otherwise due under a contract, not inherently illegal, the fact that the party otherwise admittedly entitled to recover is an illegal combination under the Sherman Law. *Ib.* 6—553

142. Same—Recovery of Purchase Price Can Not be Defeated by a Defense of Contract of Exclusively Dealing with Corporation Suing, or that the Goods Could Not be Resold.—Recovery of the purchase price for goods sold and delivered by a corporation organized in violation of the Sherman Law may not be denied because the goods were sold upon condition which made the payment to the purchaser of his percentage under a proposed profit-sharing scheme devised by the corporation depend upon the exclusive dealing of the purchaser with the corporation during the following year, or because, under the contract of sale, the goods could not be resold. 57 L. Ed., 520. 6—549

4. Patents—Illegal combination.

143. Infringement of Patent—No Defense that the Owner is an Illegal Corporation under Sherman Law.—The fact that the owner of a patent is a corporation alleged to have been formed in violation of the Sherman Law, and that the patent is alleged to have been assigned to it in furtherance of the illegal purpose to create a monopoly and control the price of an article of commerce, is not available to an infringer of such patent to defeat a suit for the infringement. *National Folding-Box & Paper Co. v. Robertson*, 99 F., 985. 2—4

144. Same.—In an action by a corporation for the infringement of elevator patents, a private defendant was not entitled to urge as a defense that plaintiff was a corporation organized merely for the purpose of holding the legal title to various elevator patents alleging to have been infringed, for the purpose of controlling sales and enhancing prices of elevators and apparatus, without itself engaging in the manufacture and sale of such appliances, in violation of the Sherman Law, since

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until the United States has acted and sought to prosecute the plaintiff for violation of such act an infringer of the plaintiff's patent will not be permitted to raise such issue as a defense thereto. *Otis Elevator Co. v. Geiger*, 107 F., 131. 2—66

145. Infringement Suit can not be Maintained by Combination of Patent Owners against Assignor.—A combination among manufacturers of spring-tooth harrows, whereby a corporation, organized for the purpose, becomes the assignee of all patents owned by the various manufacturers, and executes licenses to them, so as to control the entire business and enhance prices, is void both as to the assignments and licenses, so that the corporation can not maintain a suit against one of its assignors who violates the agreement, for infringement. *National Harrow Co. v. Hench*, 84 F., 226. 1—746

See also *National Harrow Co. v. Quick*, 67 F., 130 (1—443); and ACTIONS AND DEFENSES, 79—81.

146. Claim of Unlawful Combination no Defense to Suit for Infringement of Trade-Mark.—The claim that a conveyance by one manufacturing corporation to another of all its property, including its trade-marks, trade-names, brands, and labels, contains a provision in violation of the Sherman Law of the United States, is not available as a defense by another manufacturer when sued for infringement or unfair competition in respect to a trade-mark, brand, or label, where it is shown that the same has been continuously used by the grantee as its own, since a time prior to the commencement of the alleged infringement or unfair imitation. *Reynolds Tobacco Co. v. Allen Bros. Tobacco Co.*, 151 F., 833. 3—154

147. Suit for Infringement—Defenses.—That a complainant is itself, or is a member of, a combination in violation of the Sherman Law, is not a defense available in an action for the infringement of a patent, nor does it show a defect in complainant's title. *Motion Picture Patents Co. v. Lumley*, 178 F., 105. 3—765

148. Suit for Infringement.—That the owner of a patent is a party to an illegal combination in restraint of trade does not deprive him of the right to sue for infringement of his patent. *Virtue v. Creamery Package Mfg. Co.*, 179 F., 119. 3—801

149. Same.—Evidence held insufficient to establish a combination or conspiracy in restraint of interstate trade or commerce between two defendants, each of whom brought a suit against plaintiff for infringement of a different patent, which would sustain an action by plaintiff for treble damages under the Sherman Law. *Ib.* 3—801

150. Suit for Infringement—Allegation of Unlawful Conspiracy.—It is no defense to a suit for infringement of a patent that the complainant and third persons have entered into an illegal combination or conspiracy in restraint of trade; and

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such defense is not aided by an allegation in the answer that the suit is not brought in good faith to prevent infringement, but for the purpose of making such conspiracy effective. *Motion Picture Patents Co. v. Ullman*, 186 F., 175.

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151. Patent.—No Defense to Suit for Infringement, that it was Acquired in Aid of an Unlawful Combination.—An assignee of a patent holding under an assignment made in aid of a combination violative of the Sherman Law may sue in equity an infringer of the patent who can not justify his wrongful acts by attacking the assignee as an unlawful combination, since a decree establishing title in the assignee and an infringement by the infringer need not touch the question of illegal combination. *U. S. Fire Esc., etc., Co. v. Halsted Co.*, 195 F., 295.

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152. That United States has Instituted Suit Against a Corporation as an Illegal Monopoly, is no Defense to an Infringement Suit.—An allegation in the answer in an infringement suit that the United States had instituted a suit for the dissolution of complainant corporation as an illegal monopoly states no ground of defense, since the fact alleged, if proved, would be irrelevant. *Motion Picture Patents Co. v. Eclair Film Co.*, 208 F., 416.

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5. Agreement not to engage in business.

153. Suit to Enforce.—In a suit to enjoin a defendant from violating a contract by which for a valuable consideration he covenanted not to engage in business for himself or another in competition with that of complainant for a term of years, and to enjoin a co-defendant from employing his services in a competing business, it is no defense that his co-defendant hired him in ignorance of the contract, and will suffer damage if deprived of his services. *A. Booth & Co. v. Davis*, 127 F., 875.

2—319

Affirmed, 131 F., 31 (2—526).

See also *Robinson v. Suburban Brick Co.*, 127 F., 804 (2—312).

6. Generally.

154. That Combination Has Not Been Injurious to the Public.—It is no defense to a suit to dissolve a combination as illegal, under the Sherman Law, that it has not been productive of injury to the public or even that it has been beneficial, by enabling the combination to compete for business in a wider field. *U. S. v. Chesapeake & O. Fuel Co.*, 105 F., 93.

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Affirmed, 115 F., 610 (2—151).

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- 155. That Combination Is in the Form of a Corporation or Holding Company.**—The fact that the purpose of an illegal combination between stockholders of two railroad companies operating parallel and competing interstate lines, to secure unity of interest and control of such companies and to prevent competition, has been accomplished by the formation of a corporation which has acquired the ownership of a majority of the stock of each of the companies, can not be urged to defeat a suit by the United States to restrain the exercise of the power so illegally acquired by the corporation through such combination, as imposing a restraint upon interstate commerce in violation of the Sherman Law. *U. S. v. Northern Securities Co.*, 120 F., 721. 2—215
- 156. Same—Questions of Benefit to the Public—Public Policy.**—Where the effect of a combination is to directly prevent competition between two parallel and naturally competing lines of railroad engaged in interstate business, it is in restraint of interstate commerce, and a violation of the Sherman Law; and the court, in a suit to enjoin it as such, can not consider the question whether the combination may not be of greater benefit to the public than competition would be; that being a question of public policy, to be determined by Congress. *Ib.* 2—228
- Affirmed, 193 U. S., 197 (2—338).
- 157. The pendency of a suit in a court can not be pleaded in abatement of an action in a circuit court of the United States to recover treble damages under section 7 of the Sherman Law, since the State court is without jurisdiction to enforce the remedy given by said section, and therefore the same case can not be depending in both courts.** *Loewe v. Lawlor*, 130 F., 633. 2—563
- 158. Settlement with One of Two Joint Wrong-doers Bar to Further Recovery.**—Plaintiff brought suit in a State court against the president of a wholesale grocers' association to recover damages for an alleged wrongful interference with his business. He subsequently commenced an action in a Federal court against the association to recover damages for the same injury, alleged to have been caused by a conspiracy in restraint of trade, in violation of the Sherman Law. Pending such action he settled the suit in the State court, and received payment of the agreed sum from the defendant therein. *Held*, that such settlement was an accord and satisfaction of his entire claim and a bar to the second suit, and that, not being entitled to recover actual damages in such suit, he was not entitled to recover the threefold damages or attorney's fees provided for by section 7 of the act. *Clabaugh v. Southern Wholesale Grocers' Ass'n*, 181 F., 707. 3—815

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159. **No Defense to Action That Trust Corporation Is Not a Formal Party When Represented by Its President.**—Where a contract for the organization of plaintiff corporation was made for the purpose of enabling a trust organized to monopolize the business to control it, and the trust interest in the corporation was represented by P. in person, who was president of the trust, it was no answer, to an objection that the contract was void as in restraint of trade, that the trust corporation was not a formal party to the proceeding. *McConnell v. Camors-McConnell Co.*, 152 F., 331. 3—200
160. **Acts of Foreign Government.**—Where plaintiff's plantation in Panama, over which the Costa Rican Government exercised de facto sovereignty, was injured through the acts of the Costa Rican officers and soldiers acting pursuant to an alleged conspiracy between the officers of the Costa Rican Government and defendant, plaintiff's competitor in business, defendant could not be charged with the acts of such Costa Rican officials on the theory that the Costa Rican Government merely acted as defendant's agent in carrying out its desires, there being nothing to show that the Costa Rican Government was not acting on its own responsibility and in its governmental capacity. *American Banana Co. v. United Fruit Co.*, 166 F., 266. 3—570
161. **Same—Government and Individual Not Joint Tort-Feasors.**—Where officers and soldiers of Costa Rica committed depredations on plaintiff's plantation in Panama, through an alleged conspiracy between defendant and the governing officials of Costa Rica, defendant and the Costa Rican Government could not be regarded as joint tort-feasors. *Ib.* 3—570
162. **All Defenses Open Under General Issue.**—This court, having on an appeal under the Criminal Appeals Act of March 2, 1907, held that allegations as to continuance of a conspiracy can not be met by special plea in bar, all defenses, including that of limitations by the ending of the conspiracy more than three years before the finding of the indictment, will be open under the general issue and unaffected by this decision. *U. S. v. Kissel*, 218 U. S., 610. 3—825
163. **Good Motives of Conspirators no Defense.**—Under the Sherman Law, which denounced unreasonable competition and conspiracies, a "conspiracy" may have as an element the seeking of an unlawful end or the employment of unlawful means, and the good motives of the conspirators are no defense. *U. S. v. Motion Picture Pat. Co.*, 225 F., 806. 6—213
164. **Same—Where the Purpose was to Restrain, that Acts did not Relate Directly to Interstate Commerce, not a Defense.**—That the alleged unlawful acts of defendants did not relate directly to interstate commerce is not a defense, where it was their

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purpose to restrain such commerce, and that was their necessary, although indirect, effect. *Dowd v. United Mine Workers of America*, 235 F., 7. 6—658

105. **When Doctrine of Laches is Inapplicable.**—The doctrine of laches is inapplicable to a suit to abrogate an illegal monopoly, where some of the acts in furtherance of the monopoly were committed just before the filing of the bill, and in addition to this, defendants were apprised before the beginning of the suit that their methods of doing business were deemed by the Government violations of the statute. *U. S. v. Eastman Kodak Co.*, 230 F., 523. 5—912

ACTS.

1. **Not Unlawful to Make, in Good Faith, Comparative Demonstrations of Cash Registers with Those of Competitors.**—It was not unlawful for the officers and agents of a company manufacturing and selling cash registers to compare by comparative demonstrations or otherwise competitive cash registers with their cash registers, for the purpose of demonstrating the superiority of their register, and thereby induce prospective purchasers to buy it. *Patterson v. U. S.*, 222 F., 650. 5—137
2. **Same—Unlawful to Induce Purchasers of Competing Cash Registers to Break their Contracts of Purchase.**—It was unlawful for the officers and agents of the N. Company, engaged in manufacturing and selling cash registers, to sell or offer to sell and try to sell the N. Company's cash registers to persons who had bought and owned competing cash registers, if this involved the purchaser breaking his contract with the competitor in any particular, or was done for the purpose of driving the competitor from the field; and on a trial for conspiring in restraint of the interstate trade of competitors, an instruction that it was not unlawful for such officers and agents to sell or offer and try to sell cash registers to persons who owned competing registers in exchange at such price as was satisfactory to the parties needed qualification, and was properly refused. *Ib.* 5—137
3. **Same—Whether it was Lawful or not to Require Agents to Report Names of Purchasers of Competing Registers, Depended Upon Manner in Which, and Purpose for Which, the Information was Secured.**—Whether it was unlawful for the officers and agents of the N. Company, engaged in manufacturing and selling cash registers, to require agents of that company to report the names of persons who had purchased cash registers from competitors, or to secure samples of machines put on the market from competitors, depended on the manner in which the information or samples were obtained or secured; and on a trial for conspiring in re-

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straint of the interstate trade and commerce of competitors of the N. Company, an instruction that it was not unlawful to so require was too broad, and was properly refused. *Ib.* 5—136

See also UNLAWFUL ACTS.

ADMINISTRATORS AND EXECUTORS.

1. In Absence of a Statute, Executor Can Be Sued Only in State Granting Letters.—An executor may not, in the absence of statute authorizing it, be sued outside of the State granting his letters. *Thorburn v. Gates*, 225 F., 613. 6—200
2. Same—The Subject of Administration a Proceeding in rem, and Executor is Official Charged with Duties of Management and Distribution.—The subject of administration of estate of decedent is in rem, and an "executor" is only an official charged with the duties of management and distribution, regardless of whether he is vested with title, or whether the obligation to pay debts is personal. *Ib.* 6—201
3. Same—Code of New York Permits Suits Against Foreign, in Certain Cases.—The Code of Civil Procedure of New York, section 1836a, providing that a foreign executor may be sued in any court in the State in his capacity of executor under like restrictions as a non-resident may be sued, must be construed as opening the courts of New York to suits against foreign executors in cases where the law of the domiciliary State allows it. *Ib.* 6—201

AGENTS.

1. Acts of, Acts of Principals.—The acts of agents and employees in furtherance of a conspiracy, are the acts of the principals. *Alaska S. S. Co. v. Inter. Longshoremen's Ass'n*, 236 F., 969. 6—680

AGREEMENT.

1. Between Labor Union and Coal Operators in Other States to Compel Coal Company to Unionize Its Mines is Unlawful.—Complainant company commenced the operation of a coal mine in West Virginia with non-union miners. It was shortly notified by officers of the United Mine Workers of America that, unless it unionized its mine, a union mine in Ohio in which some of its stockholders were interested would be shut down, and it yielded, its workmen forming a union. A strike was ordered the next day, which was settled. In the next three years three strikes were ordered, and complainant was subjected to a loss thereby of \$48,000. At the time of the last, which was a general strike, it offered to comply with the terms demanded, and its employees desired to continue work, but were not permitted. They became dissatisfied, withdrew from the union, and made individual contracts with complainant by which it was agreed that the mine should remain non-union.

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Defendants, who were officers of the union, undertook to organize another local union at the mine, and threatened to shut it down unless it should be again unionized. Some time previously they had entered into an agreement with operators in other States who were competitors of the West Virginia mines by which they undertook to unionize the latter, so that they could control conditions and lessen competition. *Held*, that such agreement was unlawful, as in restraint of interstate commerce, and that complainant was entitled to relief by injunction. *Hitchman Coal & Coke Co. v. Mitchell*, 202 F., 554. 5—585

2. By a Number of Steel Manufacturers, by Means of Meetings, and Understandings to Fix and Maintain Prices, in Restraint of Competition.—At a time of panic and threatened serious financial disturbance representatives of a number of the largest steel manufacturers, who were competitors, met and after discussion came to an informal agreement or understanding to maintain prices for their own protection and the protection of customers who had stocks on hand. At later meetings committees were appointed, who considered and assented to specific prices to be maintained by each company until it should find reason to change them, in which case it was understood that it should notify the others that another meeting might be held. These tacit agreements were more or less observed by the parties until normal conditions were restored, although there were many other manufacturers who did not take part in nor regard them. *Held*, that, while no formal words of contract were used, the understanding amounted to an agreement in restraint of competition, in violation of the Sherman Law, but that such agreement would not justify the court in dissolving participating corporations on a bill filed by the Government after it had ceased to be observed. *U. S. v. U. S. Steel Corporation*, 223 F., 160. 6—155

3. For Purchase of Mimeograph Subject to License Restrictions, not Collateral.—An agreement arising from the purchase of a Rotary mimeograph subject to a license restriction that the machine may be used only with the stencil paper, ink, and other supplies made by the patentee, none of which are patented, is not collateral, so as to make its validity dependent on principles of general law, of which a Federal court will have jurisdiction. *Henry v. A. B. Dick Co.*, 56 L. Ed., 645. 6—763

4. In Unlawful Restraint of Trade not Authorized by the Copyright Law.—No more than the patent statute was the copyright act intended to authorize agreements in unlawful restraint of trade and tending to monopoly in violation of the Sherman Law. *Straus v. American Pub. Ass'n*, 231 U. S., 234. 4—854

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5. Same—Prohibiting Parties Thereto Selling Copyrighted Books to Those it Condemned Unlawful.—As the agreement involved in this case went beyond any fair and legal means to protect trade and prices, practically prohibited the parties thereto from selling to those it condemned, affected commerce between the States, it was manifestly illegal under the Sherman Law, and was not justified as to copyrighted books under any protection afforded by the Copyright Law. *Ib.*
4—856

6. For Destruction of Competition and Fixing Prices, Void.—Any agreement having for its purpose the destruction of competition and the fixing of prices is injurious to the public interest and void. *Frey & Son v. Welch Grape Juice Co.* (not reported).
6—869
Frey & Son v. Cudahy Packing Co. (not reported).
6—880

7. Party to Such Agreement, Liable for Damages.—No man has a right to be a party to an agreement or combination to fix or maintain prices, and one who does something to further such an illegal object is liable in damages to a party thereby injured. *Ib.*
6—869, 880

AGREEMENTS NOT TO ENGAGE IN BUSINESS. See ACTIONS AND DEFENSES, 153; COMBINATIONS, ETC., 102, 103, 280, 301, 308, 371.

AGREEMENTS NOT TO COMPETE IN BIDDING. See COMBINATIONS, ETC., 109-117.

ALIENS.

1. Entitled to Equal Protection of the Laws, Including Right to Combine to Improve their Condition.—So long as the United States permits aliens to immigrate, a large majority of whom are uneducated laborers, it is the duty of the Government to afford them equal protection under our Constitution and the laws pursuant thereto, including the right to combine to improve their condition. *Mitchell v. Hitchman Coal & Coke Co.*, 214 F., 699.
5—609

ALLEGATIONS AND PROOF. See PRACTICE, 5-9.

ANTICIPATED PROFITS. See DAMAGES, 3.

APPEAL AND ERROR.

1. Under Criminal Appeals Act, Supreme Court Must Accept Trial Court's Construction of Counts of Indictment.—On appeal under the Criminal Appeals Act of March 2, 1907 (34 Stat., 1246), the Supreme Court must accept the lower court's construction of the counts of the indictment, and its jurisdiction is limited to considering whether the decision of the court below that the acts charged are not criminal is based upon an erroneous construction of the statute alleged to have been violated. *U. S. v. Patten*, 226 U. S., 535.
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2. **Same—Supreme Court Must Accept Trial Court's Construction of Counts of Indictment.**—The Supreme Court, when reviewing under the Criminal Appeals Act of March 2, 1907, the judgment of a circuit court whose ruling sustaining a demurrer to certain counts in an indictment charging violations of the Sherman Law, was based upon the construction of that statute, must accept the circuit court's construction of the counts of the indictment, and can consider only whether the decision that the acts charged are not condemned as criminal by the statute is based upon an erroneous construction of that statute. *U. S. v. Patten*, 57 L. Ed., 333. 4—752
3. **Same—Supreme Court Must Assume Indictment Alleges What Trial Court Treated it as Alleging.**—On appeal under the Criminal Appeals Act of 1907 the Supreme Court must assume that the counts of the indictment adequately allege whatever the lower court treated them as alleging; and, where its decision shows that it assumed that every element necessary to form a combination was present, the Supreme Court has jurisdiction to determine whether such a combination was illegal under the statute which defendants are charged with violating. *U. S. v. Patten*, 226 U. S., 540. 4—756
4. **Same—When Sustaining of a Demurrer to Indictment Involves Construction of Statute.**—A judgment of a Federal circuit court sustaining a demurrer to certain counts in an indictment charging violations of the Sherman Law, upon the ground that the acts charged are not within the condemnation of that statute, is based upon a construction of such statute within the meaning of the Criminal Appeals Act of March 2, 1907, governing the right of the Government to a review in a criminal case. *U. S. v. Patten*, 57 L. Ed., 333. 4—752
5. **When Supreme Court Will Not Consider a Contention Not Made in Lower Courts.**—A contention not made either in the Circuit Court or in the Circuit Court of Appeals, and which is contrary to the theory on which the cause was tried, will not be considered by the Supreme Court. *Virtue v. Creamery Packing Mfg. Co.*, 57 L. Ed., 393. 4—835
6. **On Cross Appeals, Supreme Court Will Consolidate Appeals and Hear Whole Case.**—Where both parties have appealed, one from the decree entered on the mandate of the Supreme Court and the other from denial of a motion to modify such decree, as the whole decree is before the Supreme Court the dismissal of the latter appeal would not limit its power and duty to pass on the questions raised by it, the proper practice being to consolidate the appeals. *U. S. v. Terminal R. R. Ass'n*, 236 U. S., 200. 4—517
7. **Punishment for Criminal Contempt Not Reviewable by the Supreme Court on Appeal.**—A judgment of fine or imprisonment in proceedings for an alleged criminal contempt of an injunc-

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tion is not reviewable by appeal. *Gompers v. U. S.*, 58 L. Ed., 1115. 6—795

8. Same—Error Will Not Lie from Supreme Court to Review Judgment of Court of Appeals, D. C., Punishing for Criminal Contempt.—A writ of error will not lie from the Supreme Court to the Court of Appeals of the District of Columbia to review a judgment rendered on an appeal from the Supreme Court of the District of Columbia in proceedings to punish the alleged criminal contempt of an injunction. *Ib.* 6—795
9. When Plea of Immunity is Denied by State Court, Supreme Court has Power to Review Under Section 237 of the Judicial Code.—One who sets up a Federal statute as giving immunity from a judgment against him, may bring the case to the Supreme Court under section 237 of the Judicial Code, if his claim is denied by the decision of the State court. *Straus v. American Pub. Ass'n*, 231 U. S., 233. 4—853
10. Same—Denial of Plea of Immunity by State Court, Involves Claim of Federal Right, Which Supreme Court has Power to Review under Section 237, Judicial Code.—Plaintiff's contention at the trial in a State court that an agreement between publishers and booksellers to maintain retail prices on copyrighted books not only went beyond the authority conferred in the copyright laws relied upon by defendant, but was in violation of the terms of the Sherman Law making illegal combinations in restraint of trade and tending to monopoly, presents a claim of Federal right which is necessarily denied when the highest State court affirms a judgment below in favor of defendant, so as to sustain the appellate jurisdiction of the Federal Supreme Court, under section 237, of the Judicial Code, governing writs of error to a State court. *Ib.*, 58 L. Ed., 192. 4—856
11. Use of Word "Proof," in its Popular Way for "Evidence," Held not Error.—The use in this case of the word "proof" by the trial judge in its popular way for "evidence," held, in view of the caution by the judge, not to have prejudiced the defendants. *Lawlor v. Loewe*, 235 U. S., 536. 5—424
12. Appellate Court Will not Weigh Evidence.—It is not the province of an appellate court to weigh the evidence. *Patterson v. U. S.*, 222 F., 631. 5—109
13. Facts Well Pleaded, in Matter Stricken Out on Motion, Must, on Appeal, be Taken as True.—Where paragraphs presenting a defense were on motion stricken from the answer, whatever facts contained therein were well pleaded must on appeal be taken as true. *Kansas City Southern Ry. Co. v. Lusk*, 224 F., 705. 5—880
14. Same—An Order Authorizing a Receiver to Renounce a Contract, is Appealable, the Decision Being Final in its nature.—An order whereby a receiver of an insolvent railroad corpo-

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- ration was authorized to renounce a contract for the renting of terminal facilities is appealable; the decision being final in its nature, in view of the fact that such contract was practically ended. *Ib.* 5—881
15. Where Verdict for Defendant Might Have Been Under Either of Two Defenses, Plaintiff Entitled, on Writ of Error, to Raise Legal Rulings Relevant to Either Defense.—Where the verdict for defendant, relying on two defenses, might have been given under either, plaintiff, on writ of error to review the judgment thereon, was entitled to raise legal rulings relevant to either defense. *Buckeye Powder Co. v. DuPont Powder Co.*, 223 F., 885. 4—603
16. Same—Order of Court Requiring Plaintiff to Elect, Not Reviewable, Where All Evidence Not in Record.—The action of the trial court in requiring plaintiff, suing for damages under section 7 of the Sherman Law, for violations of sections 1 and 2 of the act, to elect on which violation it will rely, is not reviewable, where all the evidence is not in the record. *Ib.* 4—604
17. Same—When Order of Court, Requiring Election, is Harmless Error.—Where, in an action for damages under section 7 of the Sherman Law, plaintiff's case depended on the truth of the charge to which practically all the evidence was directed, that defendants had unlawfully attempted to monopolize a large part of the trade in an article of commerce, and the case was tried on the merits, the rule requiring plaintiff to elect whether he would rely on a violation of section 1 or of section 2 was harmless. *Ib.* 4—605
18. Reviewing Court Will Regard Contracts in Their True Light, Where Trial Court Required Plaintiff to Proceed on Wrong Theory.—Where, in an action on contracts claimed to violate the State anti-trust laws, plaintiff sued on the contracts as contracts of consignment, but by the court's ruling that they were contracts of sale was compelled to proceed as if they were contracts of sale, this enforced change of attitude did not preclude an appellate court from regarding the contracts in their true light as contracts of consignment. *Cole Motor Car Co. v. Hurst*, 228 F., 282. 6—388
19. Order Sustaining Demurrer to Complaint Will Be Reviewed on Error After Judgment Dismissing Complaint.—As there can be no writ of error until after final judgment, and as orders sustaining demurrers to the complaint, which necessitated plaintiff's pleading anew, are a part of the record, such orders will be reviewed on writ of error, after judgment dismissing the complaint. *United Copper Sec. Co. v. Amalgamated Copper Co.*, 232 F., 575. 6—445
20. Where an Action Was Dismissed on Demurrer to Complaint, Appellate Court Will Review All Questions Raised by the De-

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murrer.—On writ of error from a judgment dismissing an action on demurrer to the complaint, the appellate court is not limited to a consideration of the particular ground of demurrer sustained by the trial court, but all questions raised by the demurrer are reviewable. *Dowd v. United Mine Workers of America*, 235 F., 3. 6—652

- 21. On Appeal to the Supreme Court, Testimony in the Record Must Be Reduced to Narrative Form, Unless Leave to Omit is Given by the Supreme Court.**—The act of Congress of February 13, 1911 (36 Stat., 901), provides that the appellant or plaintiff in error shall cause to be printed under such rules as the lower court shall prescribe, and file in the office of the clerk of the Circuit Court of Appeals, 25 printed transcripts of the record of the lower court, and of such part or abstract of the proofs as the rules of the Circuit Court of Appeals may require, and in such form as the Supreme Court shall prescribe, one of which transcripts shall be certified. Supreme Court rule 31 prescribes the form of printed records and briefs. Equity rule 75 provides that the evidence to be included in the record on appeal shall not be set forth in full, but shall be stated in simple and condensed form, the testimony being stated only in narrative form, save that, if the parties desire it, and the court or judge so directs, any part of the testimony shall be reproduced in the exact words of the witness. That the appellant shall present his statement of the evidence, and that, if it be true, complete, and properly presented, it shall be approved by the court or judge. Because of the anticipated bulkiness of the record in a suit in equity, the parties had the notes of the testimony transcribed directly into printed pages and bound into convenient volumes. The record so printed conformed to rule 31 and to the provisions of the statute. *Held* that, while the record in this shape was found satisfactorily convenient, the District Court could not approve a transcript of the record for transmission to the Supreme Court without the statement in narrative form required by rule 75, unless leave to omit such statement was obtained from the Supreme Court, as it would be an evasion of the duty imposed on the District Court to apply the exception contained in the rule as to setting forth parts of the testimony in full to the whole testimony. *U. S. v. Motion Picture Patents Co.*, 230 F., 541. 6—222

APPEAL. See **COURTS**, 38, 88, 93, 95–100.

APPORTIONMENT, DIVISION, OR RESTRICTION OF TERRITORY.

See **COMBINATIONS, ETC.**, 97, 101, 109, 265, 320.

ATTACHMENT.

1. Grounds for Dissolution—Prior Attachment in State Court.—

Where the State statute provides for successive attachments

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of the same property, a prior attachment in a State court affords no ground for the discharge of an attachment in a Federal court. *Lowe v. Laylor*, 130 F., 633. 2—563

ATTEMPT TO MONOPOLIZE.

1. There Can Be no Finding of an Attempt to Monopolize, Without Proof of Intent. *U. S. v. Quaker Oats Co.*, 232 F., 499.

ATTORNEY.

1. When Purchase by, of Claim for Damages, Champertous.—

While a claim for treble damages by a person injured by a violation of the Sherman Law is assignable, where a lawyer, for services that he was willing to settle for \$5,000 cash, took an assignment of a claim which he thought was worth at least \$75,000, the transaction was champertous, and he could maintain no action on the assigned claim, as it was taken for the purpose of speculation. *Sampliner v. Motion Picture Pat. Co.*, 243 F., 277. 6—1001

ATTORNEY GENERAL. See ACTIONS AND DEFENSES, 54, 55, 89, 116; PARTIES, 19, 20.

ATTORNEY'S FEES. See COSTS.

AVOIDANCE OF PAYMENT. See ACTIONS AND DEFENSES, 136, 137.

BAILMENT. See SALE, 4.

BATH-TUBS. See COMBINATIONS, 58; CONTRACTS, 54.

BIDDING, AGREEMENTS NOT TO COMPETE. See COMBINATIONS, ETC., 109, 110, 117, 119, 161, 265.

BILL. See EQUITY, 2, 4, 5; PLEADING AND PRACTICE, 2, 5, 11, 12, 51, 52, 67, 68, 71, 83, 84, 91.

BILL OF PARTICULARS.

1. Defendants Not Entitled to, in Action for Damages, When Facts Charged Within Their Own Knowledge.—Where, in an action for damages for injuries sustained by reason of an alleged unlawful combination in restraint of trade, the complaint alleged a combination, which was not against plaintiffs specifically, the proof of which might be founded on inferences to be drawn from the course of business, and two of the defendants had already been held to have participated in the illegal combination, in a proceeding brought by the United States on behalf of the public, and the other had knowledge of its own relations to the defendants and wherein it participated in any combination, defendants were not entitled to a bill of particulars, alleging specific details of the combination and its effect on plaintiffs. *Locker v. American Tobacco Co.*, 194 F., 232. 4—611

2. Same—Defendants Are Entitled to, When Special Damages Are Claimed.—Where, in an action to recover damages for injuries due to an alleged unlawful combination in restraint of trade, the damages claimed were very large, and were in the nature of special damages, defendants were entitled to a bill of particulars with reference thereto. *Id.* 4—612

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- 3. Defendants Are Entitled to, in Action to Recover Special Damages.**—In an action to recover special damages in a very large sum, alleged to have been caused by an illegal combination by defendants in restraint of trade, a defendant is entitled to a bill of particulars, stating in what such damages consist, and in what way they were caused to plaintiff by the alleged conspiracy. *Locker v. American Tobacco Co.*, 200 F., 975.

4—617

- 4. Same—When Required, it Limits Claim to the Particulars Stated.**—Under Code Civil Procedure, New York, section 531, which authorizes courts to require bills of particulars and to preclude a party failing to comply with such an order from introducing evidence of the matters to which the order relates, the furnishing of a bill of particulars is in itself a limitation of the claim to the particulars stated, and while it is not necessary to express the limitation in the order, such a provision is not prejudicial. *Ib.*

4—617

- 5. Can Not Aid an Indictment Which Lacks a Statement of Facts Essential to Constitute the Offense Charged.**—A bill of particulars can not aid an indictment which lacks a statement of the essential facts to constitute the offense charged, but is appropriate where there is a good indictment, and defendants desire to be more particularly informed as to matters which will aid them in their defense. *U. S. v. Rintelen*, 233 F., 799.

6—532

- 6. Granting of, Within Discretion of Trial Court, and Action Not Reviewable.**—A motion by the defendant in a criminal case for a bill of particulars is addressed to the discretion of the court, and its action thereon is not reviewable. *Knauer v. U. S.*, 237 F., 13.

6—694

BOOKSELLERS. See COMBINATIONS, ETC., 86, 182, 183.

BOYCOTT.

- 1. Order of Court Restraining, Not an Abridgment of Free Speech.**—An order of a court of equity, restraining defendants from boycotting complainant by publishing statements that complainant was guilty of unfair trade, does not amount to an unconstitutional abridgment of free speech; the question of the validity of the order involves only the power of the court to enjoin the boycott. *Gompers v. Bucks Stove & Range Co.*, 221 U. S., 430.

4—778

- 2. Same—To Enjoin, it Should Appear There is a Conspiracy Causing Irreparable Damage.**—In order that a boycott may be enjoined, it must appear that there is a conspiracy causing irreparable damage to complainant's business or property. *Ib.*

4—778

- 3. Same—When Enjoined, the Circulation of Circulars May Constitute Means of Unlawfully Continuing.**—Where conditions exist that justify the enjoining of a boycott, the publication and use of letters, circulars, and printed matter may constitute

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the means of unlawfully continuing the boycott and amount to a violation of the order of injunction. *Id.* 4—779

4. **Members of Labor Union Boycotting Goods of Manufacturer, Liable for Damages.**—Where members of a labor union attempted to compel a hat manufacturer to unionize his factory, left his employment therein, and with the assistance of members of affiliated organizations declared a boycott on his goods in other States into which the goods had been shipped for sale at retail, such acts constituted a combination or conspiracy in restraint of interstate commerce in violation of the Sherman Law, for which the manufacturer was entitled to recover treble damages under section 7. *Lawlor v. Loewe*, 209 F., 724. 5—408

5. **"Secondary Boycott" Illegal Under the Sherman Law, Regardless of Motives of Parties.**—Where it was intended to restrain the trade of the blacklisted persons, the "secondary boycott," or attempt of the members of the association to coerce non-members into refraining from dealing with blacklisted persons, was illegal under the Sherman Law, regardless of defendants' purpose or motive, as no purpose or motive could make such action justifiable or such restraint legal. *U. S. v. King*, 229 F., 279. 6—420

See also COMBINATIONS, ETC., 243, 255, 376.

See also SECONDARY BOYCOTT.

BURDEN OF PROOF. See EVIDENCE, 3, 4.

CARRIERS.

1. **Common Carriers Not Included Within the Statute.**—It was not the intention of Congress to include common carriers subject to the act of February 4, 1887, within the provisions of the Sherman Law, which is a special statute, relating to combinations in the form of trusts and conspiracies in restraint of trade. *U. S. v. Trans-Mo. Ft. Assn.*, 53 F., 440. Case reversed, 166 U. S., 290 (1—648). 1—80
2. **May Demand Prepayment of Freight from One Connecting Carrier and Not from Another.**—A common carrier engaged in interstate commerce may at common law, and under the interstate commerce law, demand prepayment of freight charges, when delivered to it by one connecting carrier, without exacting such prepayment when delivered by another connecting carrier, and may advance freight charges to one connecting carrier without advancing such charges to another connecting carrier. *Gulf, C. & S. F. Ry. Co. v. Miami S. S. Co.*, 86 F., 416. 1—835
3. **Same—Through Transportation—Joint Rates and Billing.**—Such carrier may enter into a contract with one connecting carrier for through transportation, through joint traffic, through

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billing, and for the division of through rates, without being obligated to enter into a similar contract with another connecting carrier. *Ib.* 1—838

4. Not Required to Receive Goods Without Prepayment of Charges.—

The rules of the common law do not require a carrier to receive goods for carriage, either from a consignor or a connecting carrier, without prepayment of its charges if demanded, nor to advance the charges of a connecting carrier from which it receives goods in the course of transportation; nor can it be required to extend such credit or make such advances to one connecting carrier because it does so to another. *Southern Ind. Exp. Co. v. U. S. Exp. Co.*, 88 F., 662. 1—865

5. Same—Express Companies.—The interstate commerce act does not apply to independent express companies not operating railway lines. *Ib.* 1—866

See also COMBINATIONS, ETC., 188, 199, 201, 344, 355, 357, 358, 359.

CASE.

1. When Suit for Infringement Presents One under Patent Law.—

A suit for infringement which turns upon the scope of the patent and privileges of the patentee thereunder, presents a case arising under the patent law. *Henry v. A. B. Dick Co.*, 224 U. S., 13. 6—744

2. Same—When Suit is on Broken Contract, Case Not under Patent Law.—

A patentee who has leased his patent to a licensee under restrictions may waive the tort involved in infringement and sue upon the broken contract; but in that event the case is not one arising under the patent laws and, in the absence of diversity of citizenship, a Federal court has no jurisdiction thereof. *Ib.* 6—744

3. Same—Nature of, often Determined by Remedy Sought.—

Whether the case is one of infringement, of which the Federal court has jurisdiction, or of contract, of which it has not jurisdiction, is often determined by the remedy which complainant seeks. *Ib.* 6—745

CASES CERTIFIED TO SUPREME COURT.

1. Supreme Court, in Cases Certified, Will Decide Question on Facts as Certified.—

Defendants in an action for contributory infringement of a patented rotary mimeograph by a sale of ink to the purchaser in violation of a license restriction that it should be used only with the ink made by the patentee can not, where the facts certified to the Supreme Court state that they made a direct sale of the ink to the user of the patented article with knowledge that, under the license from the patentee, she could not use such ink in connection with the

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machine without infringement of the monopoly of the patent, and that the sale was made with the expectation that it would be used in connection with such mimeograph, claim that the sale of the ink was not an infringement as it might be used in a non-infringing way. *Henry v. A. B. Dick Co.*, 56 L. Ed., 645. 6—774

CERTIORARI. See **COURTS**, 64, 65.

CHAMPERTY.

1. **Purchase of Claim for Damages by Attorney.**—While a claim for treble damages by a person injured by a violation of the Sherman Law is assignable, where a lawyer, for services that he was willing to settle for \$5,000 cash, took an assignment of a claim which he thought was worth at least \$75,000, the transaction was champertous, and he could maintain no action on the assigned claim, as it was taken for the purpose of speculation. *Sampliner v. Motion Picture Pat. Co.*, 243 F., 277. 6—1001

CHARGE OF COURT.

1. **That Jury Must Not Allow Speculative Damages, when Sufficient.**—When claims for damages for loss of custom are definitely stated, a charge advising the jury that the burden of proof is on the plaintiff, and that they must not allow speculative damages, and that they are not required to guess at amounts but should be able to calculate them from evidence, sufficiently guards against the danger of supposititious profits being considered as an element of the verdict. *Thomsen v. Cayser*, 243 U. S., 89. 6—730

CITIZENSHIP.

1. **Unincorporated Association Not a Citizen of Any State.**—A voluntary unincorporated association is not a citizen of any State, and hence the Federal Circuit Court has no jurisdiction of a labor union constituting such association, nor of its members generally, on a bill against them to enjoin interference with an employer's business. *Irving v. Joint Council of Carpenters, etc.*, 180 F., 898. 5—379

COAL. See **COMBINATIONS, ETC.**, 83, 84, 85, 129, 146.

COLLATERAL ATTACK.

1. **When Raising Defense of Illegality of a Corporation, as a Defense to a Suit for Recovery of Purchase Price for Goods Sold Would Be.**—The legal existence of a corporate seller of goods can not be collaterally attacked by raising the objection in a suit for the purchase price that the corporation was organized in violation of the Sherman Law, forbidding combinations in restraint of interstate commerce. *Wilder Mfg. Co. v. Corn Products Ref. Co.*, 57 L. Ed., 520. 6—555

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COMBINATIONS, CONSPIRACIES, CONTRACTS, ETC., IN RESTRAINT OF TRADE AND COMMERCE.

I. IN GENERAL.

1. General Principles.

1. **Whether a Restraint of Trade is Caused by a Combination Must be Judged by the Usual Rule of Legal Responsibility.**—Whether a combination causes a restraint of interstate commerce must be judged by the usual rule of legal responsibility; that is, whether the effect upon the interstate movement of goods or persons is within those consequences which would reasonably be supposed to result from the acts of the parties, but results insignificant in proportion to the total effect will be disregarded. *Maricelli, Lim. v. United Book-
ing Offices*, 227 F., 168 5—948
2. **Same—Combined Effect of Separate Acts Must be Regarded as a Whole.**—While the combined effect of the separate acts alleged to have made a combination illegal must be regarded as a whole, the strength of each act must be considered separately. *Virtue v. Creamery Package Mfg. Co.*, 227 U. S., 33. 4—881
3. **In Determining Validity, Court May Look to Intent and Purpose.**—In determining the validity of a combination the court may look to the intent and purpose of those conducting the transaction and to the objects had in view. *U. S. v. Union Pacific R. R. Co.*, 228 U. S., 93. 4—682
4. **Not Excusable Because of Good Motives.**—A combination is not excusable upon the ground that it was induced by good motives and produced good results. *Thomsen v. Cayser*, 243 U. S., 86. 6—728
5. **In Restraint of Trade, Not Justified by Beneficial Effect.**—If a contract or combination be in unreasonable restraint of trade, the fact that in a particular given case the court or jury may think the result of a contract or combination may be on the whole beneficial rather than harmful, will not justify such contract or combination. *Frey & Son v. Welch Grape Juice Co.* (Not reported.) 6—869
Fry & Son v. Cudahy Packing Co. (Not reported.) 6—880
6. **If Otherwise Illegal, Is None the Less so, Though It May for a Time Stimulate Competition.**—A combination otherwise illegal under the Sherman Law as suppressing competition, is not the less so because for a time it may tend to stimulate competition—and so held as to a corner in cotton. *U. S. v. Patten*, 226 U. S., 541. 4—757
7. **Acts Absolutely Lawful May Be Steps in a Criminal Plot.** *U. S. v. Reading Co.*, 226 U. S., 357. 4—725

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8. A Combination to Effect an Unlawful Object through Lawful Means, May Constitute a Criminal Conspiracy. *U. S. v. Rintelen*, 233 F., 798. 6—532
9. A Combination May Be within the Sherman Law, though Concerned in Great Part with Internal Affairs. *Marionelli, Lim., v. United Booking Offices*, 227 F., 170. 5—951
10. While Retailer May Stop Dealing with Wholesaler, He May not Combine with Others To Do So.—While a retail dealer may unquestionably stop dealing with a wholesaler for any reason sufficient to himself, he and other dealers may not combine and agree that none of them will deal with such wholesaler without, in case interstate commerce is involved, violating the Sherman Law. *Eastern States Ret. Lum. Deal. Ass'n v. U. S.*, 234 U. S. 614. 4—875
11. Separate Acts May Be Legal under State Law, but when Taken Together, Illegal under Sherman Law.—Although separate acts of the defendants may be legal under the State law when considered alone, they may, when taken together, become parts of an illegal combination under the Sherman Law, which it is the duty of the court to dissolve. *U. S. v. Reading Co.*, 226 U. S. 352. 4—721
12. Effect and Legality of Purchase of One Railroad by Another, How to be Judged.—The effect of a purchase by one railroad company, or a portion of another railroad with which it connects, and its legality under the Sherman Law, may be judged by what was actually accomplished, and the natural and probable consequences of that which was done. *U. S. v. Union Pacific R. R. Co.*, 226 U. S., 93 4—682
13. That Party Might Have Stayed out of Business Does Not Justify Unlawful Combination.—The fact that the participants might have withheld the commercial service they rendered, i. e., stayed out of the business, can not justify an unlawful combination. *Thomsen v. Cayser*, 243 U. S., 87. 6—729
14. Same—Formed Abroad, Unlawful, if Put in Operation Here.—A combination affecting the foreign commerce of this country and put in operation here, is within the act although formed abroad. *Ib.* 6—729
15. Foreign Citizens May be Controlled when Operating within United States.—While the United States may not control foreign citizens operating in foreign territory, it may control them when operating in the United States in the same manner as it may control citizens of this country. *U. S. v. Pacific & Arctic R. & N. Co.*, 228 U. S., 106. 5—231
16. Mere Coincidence in Time of Bringing Infringement Suits Does Not Necessarily Indicate a Combination.—Mere coincidence in time in the bringing by separate parties of suits for infringements on patents against the same defendant does not necessarily indicate a combination on the part of those parties to

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injure the defendant within the meaning of section 7 of the Sherman Law. *Virtue v. Creamery Package Mfg. Co.*, 227 U. S., 37. 4—834

17. If a Combination Is not Unlawful, Appointment by It of Exclusive Selling Agent Was Not.—If a corporation organized by producers of slate, and to which they sold their output, was not a combination obnoxious to the Sherman Law, the appointment by it of an exclusive selling agent was not unlawful. *American Sea Green Slate Co. v. O'Halloran*, 229 F., 79. 5—308

2. Distinction.

18. Distinction Between a Contract and a Combination or Conspiracy in Restraint of Trade.—Section 1 of the Sherman Law, which declares illegal "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations," makes a distinction between a contract and a combination or conspiracy in restraint of trade. *Rice v. Standard Oil Co.*, 134 F., 464. 2—634
19. Declaration Which Made No Such Distinction Bad for Duplicity.—A declaration in a suit based on section 7, to recover damages resulting to plaintiff from a violation of such provision, which alleges in a single count that defendant entered into a "contract, combination, and conspiracy" in restraint of trade, is bad for duplicity. *Ib.* 2—635
20. Combination to Restrain—Conspiracy to Monopolize.—The Sherman Law (sec. 1) provides that every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce, is illegal, and every person who shall make any such contract, or engage in any such conspiracy, etc., on conviction shall be fined. Section 2 declares that every person who shall monopolize, or attempt to monopolize, or combine or conspire to monopolize, any part of the interstate trade or commerce, on conviction shall be punished, etc. *Held*, that such sections referred to and made illegal two different things: Section 1, combinations in restraint of interstate trade and commerce; and section 2, combinations or conspiracies to monopolize, or to attempt to monopolize, interstate trade and commerce. *Monarch Tobacco Works v. American Tobacco Co.*, 165 F., 777. 3—538

3. Legality—How determinable—Test.

21. The test of the validity of contracts or combinations in restraint of trade is not the existence of restriction upon competition imposed thereby, but the reasonableness of that restriction under the facts and circumstances of each particular case.

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Public welfare is first considered, and, if the contract or combination appears to have been made for a just and honest purpose and the restraint upon trade is not specially injurious to the public and is not greater than the protection of the legitimate interests of the party in whose favor the restraint is imposed reasonably requires, the contract or combination is not illegal. *Shiras*, District Judge, dissenting, on the ground that this rule is not applicable to corporations charged with public duties. *U. S. v. Trans-Mo. Ft. Assn.*, 58 F., 58. 1—186

Case reversed, 166 U. S., 290 (1—648).

22. The test of the legality of a combination under the Sherman Law is its necessary effect upon competition in commerce among the States or with foreign nations.

If its necessary effect is only incidentally or indirectly to restrict that competition, while its chief result is to foster the trade and increase the business of those who make and operate it, it does not violate that law.

But, if its necessary effect is to stifle or directly and substantially to restrict free competition in commerce among the States or with foreign nations, it is illegal within the meaning of that statute. *U. S. v. Standard Oil Co.*, 173 F., 188. 3—712

23. The test of an "unlawful combination" under section 1 of the Sherman Law is its necessary effect upon free competition in commerce among the States or with foreign nations. A combination, the necessary effect of which is to stifle, or directly and substantially to restrict, such competition, is unlawful under that act. But if the necessary effect of a combination is but incidentally and indirectly to restrict competition, while its chief result is to foster the trade and increase the business of those who make and operate it, it does not fall under the ban of this law. *Union Pacific Coal Co. v. U. S.*, 173 F., 739. 3—735

24. Power Vested Indicative of Character.—The power to restrict competition in commerce among the several States or with foreign nations, vested in a person or an association of persons by a combination, is indicative of the character of the combination, because it is to the interest of the parties that such a power should be exercised, and the presumption is that it will be. *U. S. v. Standard Oil Co.*, 173 F., 188. 3—713

25. Same.—The combination in a single corporation or person, by an exchange of stock of the power of many stockholders holding the same proportions, respectively, of the majority of the stock of each of several corporations engaged in commerce in the same articles among the States or with foreign nations, to restrict competition therein, renders the power thus vested

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- in the former greater, more easily exercised, more durable, and more effective than that previously held by the stockholders, and it is illegal. *Ib.* 3—715
26. Any combination whatever to secure action which essentially obstructs the free flow of commerce between the States, or restricts, in that regard, the liberty of a trader to engage in business, is within the inhibition of the Sherman Law against combinations "in restraint of trade or commerce among the several States." *Loewe v. Lawlor*, 208 U. S., 293. 3—341
27. Provisions Apply to All Contracts in Restraint—Not Merely to Unreasonable Restraints.—The prohibitory provisions of the Sherman Law apply to all contracts in restraint of interstate or foreign trade or commerce without exception or limitation, and are not confined to those in which the restraint is unreasonable. *U. S. v. Trans-Missouri Freight Association*, 166 U. S., 290. 1—649
28. Any restraint of interstate trade or commerce, if it be accomplished by a conspiracy, is unlawful. *U. S. v. Debs*, 64 F., 724. 1—322
29. In a suit to restrain alleged violations of the Sherman Law, against trusts and monopolies affecting interstate commerce, the existence of an illegal combination among the defendants is to be determined not alone from what appears on the face of the preamble, rules, and by-laws of their association, but from the entire situation, and the practical working and results of their methods of doing business, as disclosed by the evidence. *U. S. v. Hopkins*, 82 F., 529. 1—725
30. The only question in each case where the validity of a contract or combination under the law is involved is whether or not its necessary effect is to restrain interstate commerce. *Chesapeake & O. Fuel Co. v. U. S.*, 115 F., 610. 2—151
31. In determining whether or not a combination is in violation of the Sherman Law, as in restraint of interstate commerce, it is immaterial that such is not its ultimate object, which is in most cases to increase the trade and profits of the parties to such combination; nor is it material to ascertain what proportion the resulting restraint of interstate commerce bears to other results. The true inquiry is whether it tends directly to appreciably restrain interstate trade, and, if it does, it is within the statute, although such effect may not be so considerable as its other effects. *Ellis v. Inman, Poulsen & Co.*, 181 F., 182. 2—577
32. The test of the violation of the Sherman Law by a contract or combination is its effect upon competition in commerce among the States. If its necessary effect is to stifle or to directly and substantially restrict interstate commerce, it falls under the ban of the law, but if it promotes or only incidentally or indirectly restricts competition, while its main purpose and

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- chief effect are to promote the business and increase the trade of the makers, it is not denounced or avoided by that law. *Phillips v. Iola Portland Cement Co.*, 125 F., 593. 2—284
33. To render a combination unlawful under the Sherman Law it need not be one which by its terms refers to interstate commerce, but it is sufficient if its purpose and effect are necessarily to restrain interstate trade. *Gibbs v. McNeeley*, 118 F., 120. 2—194
34. Form Combination Assumes no Defense.—A combination can not escape the condemnation of the Sherman Law merely because of the form it assumes, and a single corporation, if it arbitrarily uses its power to force weaker competitors out of business, or to coerce them into a sale to or union with such corporation, puts a restraint on interstate commerce, and monopolizes or attempts to monopolize a part of such commerce, in a sense that violates the act. *U. S. v. du Pont, etc., Co.*, 188 F., 151. 4—374
35. Act Includes Every Combination Which Directly and Substantially Restricts Interstate Commerce.—The generality of the language used in the Sherman Law, declaring illegal "every contract, combination, or conspiracy in restraint of trade or commerce among the several States or with foreign nations," indicates the purpose of Congress to include in the prohibition every combination which directly and substantially restricts interstate commerce, whatever its form. *U. S. v. Northern Securities Co.*, 120 F., 721. 2—215
36. Nature of Schemes Prohibited.—Whether any given business scheme falls within the prohibition of the Sherman Law, as a combination or conspiracy in restraint of interstate commerce, or an attempt at monopoly of a portion thereof, is to be determined by its effect on interstate commerce, which need not be a total suppression of trade nor a complete monopoly, but it is sufficient if its necessary operation tends to restrain interstate commerce, and to deprive the public of the advantages flowing from free competition. *U. S. v. MacAndrews & Forbes Co.*, 149 F., 833. 3—95
37. Same.—A secret arrangement between two corporations, which together produced about 85 per cent of all the licorice paste consumed in the United States and sold to consumers throughout the country, by which they ceased competition, fixed from time to time the prices at which each should sell, and apportioned the customers between them, and also by concerted action secured contracts with their chief, if not only competitors, which enabled them to control either the output of such competitors or the prices at which and the persons to whom they should sell, and in pursuance of which scheme they were enabled to and did advance the price of the article to all purchasers nearly 50 per cent within a few months.

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was one directly affecting interstate commerce, and constitutes a combination and conspiracy in restraint of such commerce, and an attempt to monopolize a portion of the same, within the prohibition of the Sherman Law. *Ib.* 3—95

38. Reasonableness of Restraint Where the Result Directly Restrains Commerce.—Where a combination of manufacturers and wholesalers of wall papers was claimed to be in restraint of trade and in violation of the Sherman Law, it was immaterial to the invalidity of the combination that the agreement was valid at common law as imposing only a reasonable restraint on competition, provided the direct result of its operation was to directly restrain freedom of commerce between the States or with foreign nations. *Continental Wall Paper Co. v. Voight & Sons Co.*, 148 F., 946. 3—54

39. Every combination which restrains free competition in interstate trade is a combination in restraint of interstate commerce, in violation of the Sherman Law. *U. S. v. American Tobacco Co.*, 164 F., 717. 3—452

40. Same—Consolidation of Competing Corporations.—The consolidation into one corporation of a large number of corporations engaged in the different branches of the tobacco industry, many of which were previously active competitors in interstate and foreign commerce, with the result of eliminating such competition and of giving the consolidated company control of at least 75 per cent of the entire manufactured tobacco business of the United States, including the interstate trade therein, constitutes a "combination in restraint of interstate commerce," in violation of the Sherman Law. *Ib.* 3—433

41. Restraint Need Not Amount to Total Destruction.—It is not necessary that restraint of interstate trade and commerce should be so complete as to amount to total destruction in order to constitute a violation of the Sherman Law, prohibiting combinations and conspiracies in restraint of interstate trade and commerce, or to monopolize or attempt to monopolize the same. *Monarch Tobacco Works v. American Tobacco Co.*, 165 F., 781. 3—544

42. Same—Separate Acts.—A combination or conspiracy to monopolize or attempt to monopolize interstate commerce, in violation of the Sherman Law, was not immune because it was carried into effect by a series of separate acts, each one of which, taken alone, was not objectionable, where the direct object and result of all was the perfection of a combination agreement whereby the free flow of commerce between the States, or the liberty of the trader, was obstructed. *Ib.* 3—543

43. Size of Business Alone Does Not Constitute Monopoly.—The size of a business alone does not constitute a "monopoly" in

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- restraint of interstate commerce, in violation of section 2 of the Sherman Law; but to render a combination illegal thereunder it must intentionally and necessarily prevent other persons from engaging in such business, thereby stifling competition. *U. S. v. American Naval Stores Co.*, 172 F., 458. 3—684
44. **Intention of Parties May Be Material.**—In determining whether a transaction constituted an illegal contract, combination, or conspiracy in restraint of interstate trade or commerce, or to monopolize the same in violation of the Sherman Law, the intention of the parties may or may not be material, depending on whether or not the necessary effect of the agreement or acts done is to directly restrain such trade or to create such monopoly. If not, the intention is important. *Bigelow v. Calumet & Hecla Mining Co.*, 167 F., 709. 3—601
45. **The essentials of a contract or combination or conspiracy in restraint of trade or commerce among the several States or to monopolize any part of such trade or commerce, inhibited by the Sherman Law, discussed in a charge to a grand jury.** *In re Charge to Grand Jury*, 151 Fed., 839. 3—164
46. **Elements of, Explained.**—The elements of a combination or conspiracy in restraint of interstate trade and commerce and to monopolize such trade and commerce, in violation of the Sherman Law, and the facts necessary to a conviction thereunder, explained in a charge to the jury. *U. S. v. American Naval Stores Co.*, 172 F., 455. 3—679
47. **Same—Applies to Interstate Carriers.**—The Sherman Law applies to interstate carriers of freight and passengers, and any contract or combination which directly and substantially restricts the right of such a carrier to fix its own rates independently of its natural competitors places a direct restraint upon interstate commerce, in that it tends to prevent competition, and is in violation of the act, whether the rates actually fixed be reasonable or unreasonable. *Ib.* 3—686
- Decree affirmed, 193 U. S., 197 (2—338).
48. **Same.**—The act is not limited to restraints of interstate and international trade or commerce that are unreasonable in their nature, but embraces all direct restraints, reasonable or unreasonable, imposed by any combination, conspiracy, or monopoly upon such trade or commerce. *U. S. v. Northern Securities Co.*, 193 U. S., 197. 2—340
49. **When the direct, immediate, and intended effect of a contract or combination among dealers in a commodity is the enhancement of its price, it amounts to a restraint of trade in the commodity, even though contracts to buy it at the enhanced price are being made.** *Addyston Pipe & Steel Co. v. United States*, 175 U. S., 211. 1—1010

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50. It does not matter that a combination embraces restraint of trade within a single State if it also embraces and is directed against commerce among the States. *Swift & Co. v. United States*, 196 U. S., 375. 2—641
51. Applies to Combinations in a Territory Operating in a Single City.—Sherman Law, prohibiting combinations or conspiracies in restraint of trade or commerce in any territory of the United States, was not limited to combinations and conspiracies which operated in restraint of the trade of substantially an entire territory, but applied as well to a combination and conspiracy in restraint of trade and commerce in a single city in a territory. *Tribolet v. U. S.*, 95 Pac. Rep., 88. 3—322
52. Same.—Where defendant and H. entered into a combination and conspiracy in restraint of trade to control the meat business in Phoenix, Ariz., and for this purpose organized a corporation, the fact that defendant acted merely as an officer and stockholder in such corporation, and that the corporation was held not guilty, did not prevent defendant's conviction for violating the Sherman Law, prohibiting a combination or conspiracy in restraint of trade. *Ib.* 3—323
53. Agreements or combinations between dealers, having for their sole purpose the destruction of competition and fixing of prices, are injurious to the public interest and void; nor are they saved by advantages which the participants expect to derive from the enhanced price to the consumer. *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U. S., 408. 4—81
54. Same—Restraint of Trade.—Although the earlier common-law doctrine in regard to restraint of trade has been substantially modified, the public interest is still the first consideration; to sustain the restraint it must be reasonable as to the public and parties and limited to what is reasonably necessary, under the circumstances, for the covenantee; otherwise restraints are void as against public policy. *Ib.* 4—29
55. When Proven.—A combination in restraint of interstate commerce in violation of the Sherman Law was proven when the combination was shown to exist with intent to bring about restraint on interstate commerce; the overt acts being merely cumulative evidence from which the intent, purpose, and continuance of the combination might be inferred. *U. S. v. MacAndrews & Forbes Co.*, 149 F., 838. 3—102
56. Conscious Participation of Two Minds Requisite to Form.—A combination between a corporation and its officer or agent in violation of the Sherman Law can not be formed by the thoughts or acts of the officer or agent alone, without conscious participation in it of any other officer or agent of the corporation. The union of two or more persons, the conscious participation of two or more minds, is indispensable

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- to an unlawful combination. *Union Pacific Coal Co. v. U. S.*, 173 F., 745. 3—743
57. **Interfering with Purchase of Interstate Commodity not Necessarily Direct Restraint.**—Any combination which interferes with the right of a manufacturer to purchase a commodity moving in interstate commerce, at prices determined by the competitive law of normal market conditions, does not necessarily constitute a direct restraint on interstate commerce in violation of the Sherman Law. *U. S. v. Patten*, 187 F., 671. 4—284
58. **Effect of Use of Patented Device.**—A combination between a large majority of the manufacturers of enameled ironware in the United States for the purpose of fixing prices, and which is clearly in restraint of interstate trade, is not saved from illegality under the Sherman Law, by the fact that the contracts creating the combination were embodied in licenses to its members to use a patented automatic dredger, which was a useful and time-saving tool used in finishing the ware to sprinkle the last two or more coats of powdered enamel on the heated iron; the ware itself being unpatented, and the enameling being but one of several operations required in its production, to which operation even the patented dredger was not essential, but merely an improvement on the hand-operated dredgers of the prior art, still in use in some factories. *U. S. v. Standard Sanitary Mfg. Co.*, 191 F., 192. 4—423
59. **Legality of Separate Acts.**—The fact that the several acts by which the purpose of a combination in restraint of trade and commerce among the several States is effected are, taken in isolation, lawful, or intrastate in character, and not within the purview of the Sherman Law, does not relieve the combination from illegality; but such acts must be viewed as elements of a whole and in the light of their purpose and effect in combination. (Per *Buffington*, C. J.) *U. S. v. Reading Co.*, 183 F., 471. 3—931
60. **Involving Production of Commodities Within a State.**—The application of the Sherman Law to combinations involving the production of commodities within the States does not so extend the power of Congress to subjects dehors its authority as to render the statute unconstitutional. *United States v. E. C. Knight Co.*, 156 U. S., 1, distinguished. *Standard Oil Co. v. U. S.*, 221 U. S., 68. 4—137
61. **Same.**—The fact that a combination over the products of a commodity such as petroleum does not include the crude article itself does not take the combination outside of the Sherman Law when it appears that the monopolization of manufactured products necessarily controls the crude article. *Id.* 4—144

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62. Same.—The modification of power and control over a commodity such as petroleum, and its products, by combining in one corporation the stocks of many other corporations aggregating a vast capital gives rise, of itself, to the prima facie presumption of an intent and purpose to dominate the industry connected with, and gain perpetual control of the movement of, that commodity and its products in the channels of interstate commerce in violation of the Sherman Law and that presumption is made conclusive by proof of specific acts such as those in the record of this case. *Ib.* 4—142
63. Same.—The constituents of an unlawful combination under the Sherman Law should not be deprived of power to make normal and lawful contracts, but should be restrained from continuing or recreating the unlawful combination by any means whatever; and a dissolution of the offending combination should not deprive the constituents of the right to live under the law but should compel them to obey it. *Ib.* 4—148
64. The Tobacco Trust.—The record in this case discloses a combination on the part of the defendants with the purpose of acquiring dominion and control of interstate commerce in tobacco by methods and manners clearly within the prohibition of the Sherman Law; and the subject matters of the combination and the combination itself are not excluded from the scope of the act as being matters of intrastate commerce and subject to State control. *U. S. v. American Tobacco Co.*, 221 U. S., 183. 4—237
65. Same.—In this case the combination in all its aspects both as to stock ownership, and as to the corporations independently, including foreign corporations to the extent that they became coöperators in the combination, come within the prohibition of the first and second sections of the Sherman Law. *Ib.* 4—237
66. Same.—In this case the combination in and of itself, and also all of its constituent elements, are decreed to be illegal, and the court below is directed to hear the parties and ascertain and determine a plan or method of dissolution and of recreating a condition in harmony with law, to be carried out within a reasonable period (in this case not to exceed eight months), and, if necessary, to effectuate this result either by injunction or receivership. *Ib.* 4—240
67. Whether a Combination of Dealers in Milk Was an Unreasonable Restraint of Trade, Was for the Jury.—Three classes of persons consisting of different individuals were under the control of the individual members of each class. They formed a combination by agreeing to offer and pay no more than a specified price for milk for resale in interstate commerce. The several persons were not guilty of any illegal purpose or of any oppressive methods, and, except as to price, they

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were free to compete with each other. The price of milk to the producers was lowered by reason of the combination, but to what extent was not shown. Eighty-six per cent of the business of buying milk sold in designated localities for resale elsewhere after interstate transportation was in their hands. *Held*, that whether the combination was an unreasonable restraint of interstate trade, in violation of the Sherman Law, was for the jury. *U. S. v. Whiting*, 212 F., 478.

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68. May Be One in Restraint of Trade, or to Monopolize, Although Not Attempted to Any Harmful Extent, but is Potential Only.—A combination may be one in restraint of interstate trade and commerce, or to monopolize a part of such trade and commerce, in violation of the Sherman Law, although such restraint or monopoly may not have been attempted to any harmful extent, but is potential only. *U. S. v. International Harvester Co.* 214 F., 993.

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69. Of Wholesale Grocers Unlawful, Whether Contract be Express or Implied, or Whether Without Any Definite Form of Agreement.—A contract between many engaged in the same business to refrain from selling to an individual or class would be an illegal restraint of trade under the Sherman Law, prohibiting contracts, conspiracies, or combinations in restraint of trade, unenforceable at law and subjecting the participants to a criminal prosecution, whether the contract were express or implied or consisted of a mere combination or conspiracy to accomplish that end or without any definite form of agreement. *U. S. v. Southern Wholesale Grocers' Ass'n*, 207 F., 439.

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4. Contracts not enforceable.

70. Contracts that were in unreasonable restraint of trade at common law were not unlawful in the sense of being criminal, or as giving rise to an action for damages to one prejudicially affected thereby, but were simply void and not enforceable. *U. S. v. Addyston Pipe & Steel Co.*, 85 F., 271.
71. A contract made in pursuance of a combination of manufacturers seeking to restrict the production and keep up the prices of wooden dishes throughout the country, whereby a manufacturer was guaranteed a certain sum as dividends on his stock in the central company, in consideration of the closing of his factory for a year, *held* to be contrary to public policy, and therefore unlawful, and not enforceable by the courts. *Cravens v. Carter-Crume Co.*, 92 F., 479.
72. Can not Enforce Sale of a Business Which Was to Constitute Part of an Illegal Combination or Trust.—Defendant and his partner sold their bakery business to complainant corpora-

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tion, receiving payment in its stock, and defendant leased to it the premises where the business was conducted and contracted to carry it on as the purchaser's agent, for a salary. After operating under this arrangement for a time, he repudiated the sale, resumed possession under the old firm name, and refused to account to complainant. The bill was brought to enjoin him from asserting a hostile claim, for an accounting, and a receiver. Defendant, and his partner as intervenor, filed a cross-bill for rescission of the sale for fraudulent representations, and tendered back the stock. Complainant was practically a "trust," organized to monopolize the business, and had already secured control of 35 leading bakeries in 12 different States. *Held*, that, while a case was made for a receiver, pending litigation between ordinary parties, the prayer would be denied, as equity would not encourage a combination in restraint of trade, and probably illegal, under the Sherman Law, and the act of Louisiana, July 5, 1890, for the same purpose. *Amer. Biscuit & Mfg. Co. v. Klotz*, 44 F., 721. 1—2

73. A railroad company, belonging to an illegal combination in violation of the Sherman Law, can not invoke the aid of a Federal court of equity for the protection of its rights claimed under contracts which were the direct result and evidence of such unlawful combination. *Delaware, L. & W. R. Co. v. Frank*, 110 F., 689. 2—82

74. Illegal Condition as Consideration—Effect of Non-performance.—Rebate vouchers issued by a distilling company to customers, by which it promised to refund a certain sum per gallon on their purchases at the end of six months, on condition of their purchasing exclusively from the company during that time, can not be enforced, either at law or in equity, where the condition has not been performed, though such condition be illegal, as in restraint of trade, there being no other consideration for the promise. 77 Fed., 700, affirmed. *Dennehy v. McNulta*, 86 F., 825. 1—855

5. What constitutes monopolizing, unlawful combination, etc.

75. To constitute the offense of "monopolizing, or attempting to monopolize," trade or commerce among the States, within the meaning of section 2 of the Sherman Law, it is necessary to acquire, or attempt to acquire, an exclusive right in such commerce by means which will prevent others from engaging therein. *In re Greene*, 52 F., 104. 1—55
76. Unlawful Combination.—To render a combination unlawful under the Sherman Law, it need not be one which by its terms refers to interstate commerce, but it is sufficient if its

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- purpose and effect are necessarily to restrain interstate trade. *Gibbs v. McNeeley*, 118 F., 120. 2—194
77. **Combination of Lawful Elements of an Unlawful Scheme.**—Even if the separate elements of a scheme are lawful, when they are bound together by a common intent as parts of an unlawful scheme to monopolize interstate commerce the plan may make the parts unlawful. *Swift & Co. v. United States*, 196 U. S., 375. 2—641
78. **By Employment of Abnormal Business Methods, or Creating in One Corporation a Single Dominating Control, Unlawful.**—A combination formed for the express purpose and with the express intent of eliminating the natural and existing competition in interstate commerce, and of monopolizing and restraining such commerce by the employment of unusual and abnormal methods of business, or which places the direct instrumentalities of interstate commerce in such a relation as to create a single dominating control in one corporation, whereby natural and existing competition in such commerce is unduly restricted or suppressed, is one in violation of the Sherman Law. *U. S. v. Great Lakes Towing Co.*, 206 F., 741. 5—359

6. *Liability.*

79. **Liability of Members of Combinations.**—Every member of an illegal combination in restraint of interstate trade or commerce in violation of the Sherman Law is liable for the damages resulting to the business or property of a plaintiff by reason of such combination, and it is immaterial that there were no direct contract relations between plaintiff and defendant. *City of Atlanta v. Chattanooga Foundry & Pipe Works*, 127 F., 23. 2—299
80. **Same—Parties Managing Affairs of, Though Not Principals, Liable for Damages.**—Those who actively participate in managing the affairs of the combination in this country are liable under section 7, although they are not the principals. *Thomson v. Caysar*, 243 U. S., 88. 6—729

7. *Remedies—Relief—Dissolution, etc.*

81. **Although Unlawful in Inception, Unlawful Acts Having Ceased, When Court Will Not Decree Dissolution.**—Although a corporation has been adjudged in its inception to have been an unlawful combination in restraint of interstate trade and to have committed unlawful acts, whether a dissolution will be decreed rests in the discretion of the court; and where the unlawful acts have ceased, and in the judgment of the court the public interest will be best served thereby, the corporation will be permitted to remain intact and to continue its busi-

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ness, the court retaining the bill as a restraint upon its future operations. *U. S. v. American Can Co.*, 234 F., 1019. 6—519

- 82. Where Purpose Is Partly Accomplished, Court May Decree Dissolution.**—Although a combination has succeeded in accomplishing one of the purposes for which it was formed, if it is still an efficient agency to prevent competition in other methods, the court may proceed to judgment and decree of dissolution. *U. S. v. Reading Co.*, 226 U. S., 352. 4—721

ENFORCEMENT OF CONTRACTS AND COLLECTION OF DEBTS. See ACTIONS AND DEFENSES.

RECOVERY. See ACTIONS AND DEFENSES.

DEFENSES. See ACTIONS AND DEFENSES, II.

II. PROHIBITED.

- 1. Agreements, contracts, or combinations to establish, maintain, raise or control the prices, production, or output of articles or commodities.**

- 83. Coal—Agreement Between Mining Companies and Coal Dealers to Control the Price of Coal.**—An agreement between coal-mining companies operating chiefly in one State and dealers in coal in a city in another State, creating a coal exchange to advance the interests of the coal business, to treat all parties to the business in a fair and equitable manner, and to establish the price of coal, and change the same from time to time, by which it was agreed that the price of the coal at the mines should be 4½ cents, the freight being 4 cents, and the margin of the dealer should be 4½ cents, making the price to the consumer 13 cents, and that, whenever the price of the coal is advanced beyond an advance in freights, one-half the advance shall go to the mine owner and the other half to the dealer, and a penalty was provided by fine of any member selling coal at a less price than the price fixed by the exchange, and by which it was forbidden for owners or operators of mines to sell coal to any person other than members of the organization, and for dealers to purchase of miners who were not members, but exempting coal used for manufacturing and steamboat purposes from the prices prescribed until all the mines tributary to that market should come into the exchange, or until the exchange could control the prices of coal used by manufacturers, is within the language of the Sherman Law, declaring "every contract or combination in the form of a trust or otherwise, or conspiracy in restraint of trade or commerce among the several States," and also the monopolizing, or combination with another to monopolize, trade or commerce among the several States a misdemeanor. *U. S. v. Jellico Mtn. Coal & Coke Co.*, 46 F., 432. 1—9

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84. A combination between importers of coal from other States and foreign countries with a local coal dealers' association, regulating arbitrarily the retail prices of coal and providing against free competition, is one in restraint of interstate commerce within the meaning of the Sherman Law. *U. S. v. Coal Dealers' Assn. of Cal.*, 85 F., 252. 1—749
85. Contract Between a Fuel Company and a Combination of Coal Producers who Sought to Regulate the Production and Price of Coal.—A contract by which a corporation agrees to take the entire product of a number of independent persons, firms, and corporations engaged in mining coal and making coke in a certain district, which is intended for "western shipment" over a leading route of transportation, to sell the same at not less than a minimum price, to be fixed by an executive committee appointed by the producers, and to account for and pay over to such producers the entire proceeds above a fixed sum per ton to be retained as "compensation," the stated purpose being to "enlarge the western market," and under which the shipments are made into other States, is illegal under the Sherman Law, as in restraint of interstate commerce, and as tending to create a monopoly. *U. S. v. Chesapeake & Ohio Fuel Co.*, 105 F., 93. 2—34
Affirmed, 115 F., 610 (2—151).
86. Copyrighted Books—Combination of Publishers and Booksellers Throughout the United States for the Purpose of Maintaining Prices on Copyrighted Books.—The organization and combination of the publishers and booksellers of the United States into two membership associations, one known as the "American Publishers' Association" and the other as the "American Booksellers' Association," whereby they together controlled the publication and sale of at least 90 per cent of all copyrighted books, the object being to compel owners and dealers of such books to purchase them of the members of the combination at an arbitrary price fixed by it, regardless of the actual value of the books as determined by a demand in an open market, or the condition of the books, and to compel all publishers and dealers of such books to come into the combination, be controlled by it, and sell books at prices fixed by it, regardless of the value of the books or of the exigencies of the trade and situation of the seller, or be deprived of the privilege of purchasing, owning, and selling such books through a system of blacklisting, etc., the effect of which would be to cripple the business of any publisher or bookseller outside of the combination—was in violation of the Sherman Law. *Bobbs-Merrill Co. v. Straus*, 139 F., 155. 2—755
87. Drugs—Combination of Separate Associations of the Manufacturers, Wholesalers, and Retailers of Drugs, to Fix Arbitrarily the Prices of Such Articles.—Where three voluntary associa-

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tions, composed of the manufacturers, wholesalers, and retailers, respectively, of drugs, proprietary medicines, etc., were organized to arbitrarily fix a minimum retail price for such articles, which were of universal consumption and were of absolute and daily necessity, and then restricted the sale of such articles to such retailers only as conducted their retail business in accordance with the arbitrary standard of prices, such combination was in restraint of interstate commerce in the drug trade in so far as it excluded "aggressive cutters" of prices and those who dealt with them, and was in violation of the Sherman Law, prohibiting monopolies in restraint of interstate trade and commerce, etc. *Loder v. Jayne*, 142 F., 1010. 2—976

Judgment reversed by the Circuit Court of Appeals (149 F., 21), but upon other grounds than above.

88. **Lumber—Combination of Local Lumber Dealers Seeking to Raise and Maintain Price of Lumber by Refusing to Sell to Consumers who Bought from Outside Parties, Some of Such Mills Being Located in a Neighboring State.**—A complaint alleged that plaintiff was a builder doing business in Portland, Oreg.; that in such business he purchased large quantities of rough lumber from mills located at Vancouver, Wash., which was 7 miles from Portland, but that such mills did not manufacture finished or kiln-dried lumber; that defendants, who comprised all the manufacturers and dealers in Portland, combined to fix exorbitant prices on all lumber sold by them, and to compel all consumers in Portland to pay such prices by refusing to sell any finished lumber at any price to such consumers as bought lumber of any kind from other dealers, except on condition that such consumer pays to defendants the difference between the price he paid for lumber so bought from others and the price charged therefor by defendants and promises to buy all his lumber thereafter from defendants; that the purpose and effect of such combination was to prevent plaintiff and other consumers from buying lumber at Washington mills, and to obtain a monopoly of the trade in Portland at unreasonable and exorbitant prices. *Held*, that the combination charged constituted a violation of the Sherman Law, its effect being to directly restrain interstate commerce, and that the complaint stated a cause of action thereunder for the recovery of damages alleged to have resulted to plaintiffs. *Ellis v. Inman, Poulsen & Co.*, 131 F., 182. 2—577

Reversing 124 F., 956 (2—268).

89. **Same.**—In determining whether or not a combination is in violation of the Sherman Law, as in restraint of interstate commerce, it is immaterial that such is not its ultimate object, which is in most cases to increase the trade and profits of

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the parties to such combination; nor is it material to ascertain what proportion the resulting restraint of interstate commerce bears to other results. The true inquiry is whether it tends directly to appreciably restrain interstate trade, and, if it does, it is within the statute, although such effect may not be so considerable as its other effects. *Ib.* 2—583

90. Red Cedar Shingles.—An association of manufacturers of and dealers in red cedar shingles in the State of Washington formed for the purpose of controlling the production and the price of such shingles, which are made only in that State, but are principally sold and used in other States, and which, by its action in closing the mills of its members, has reduced the production, and has also arbitrarily increased the prices at which the product is sold, is a combination in restraint of interstate commerce, and unlawful under the Sherman Law. *Gibbs v. McNeeley*, 118 F., 120. 2—194

91. Tiles—Combinations to Raise Prices of Tiles, etc., and Control Output.—A complaint alleging that members of an association have conspired and combined to raise the prices of tiles, mantels, and grates, to control the output, and to regulate the prices thereof, with the intent to monopolize the trade and commerce between the other States and California in regard thereto, as well as to arbitrarily fix their prices independently of their natural market value, brings the case within the Sherman Law. *Lowry v. Tile, Mantel & Grate Assn. of Cal.*, 98 F., 817. 1—995

92. Same—Combination of Tile Manufacturers in California and Adjoining States Agreeing not to Sell to or Purchase from Dealers not Members.—The Tile, Mantel and Grate Association of California was organized by defendants, who were dealers in tiles and similar articles, for the declared purpose of uniting "all acceptable dealers" in tiles, fireplace fixtures, and mantels in San Francisco and vicinity (within a radius of 200 miles), and all American manufacturers of tiles and fireplace fixtures. The articles prescribed that other local dealers who had an established business and carried a stock of a stated value, and who were "acceptable," might, on motion of a member, be permitted to join, and that all manufacturers of tiles in the United States might become members by signing the constitution and paying an entrance fee. The local members were bound by the articles not to buy goods from any manufacturer who was not a member nor to sell goods to other dealers not members at less than list price, which was about double the market price, and the manufacturing members were bound not to sell to any dealer within the prescribed territory who was not a member. *Held*, That such association was a combination in restraint of trade among the States, illegal under section 1 of the Sherman Law,

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and also an attempt to monopolize a part of the trade and commerce among the States, within the prohibition of section 2, by shutting out from such trade all local dealers who were not members, and that defendants were liable in damages, under section 7 of the act, to such a dealer to whom a manufacturer in another State refused to sell tiles, as it had previously done, on the sole ground that such dealer was not a member of the association. *Montague v. Lowry*, 115 F., 27.

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Affirming *Lowry v. Tile, Mantel and Grate Assn. of Cal.*, 106 F., 38 (2—53).

93. Same—An Association of Dealers in Tiles Agreeing Not to Purchase from Non-Members or to Sell to Them, Except at an Advance of 50 per cent on Price to Members.—An association of wholesale dealers in tiles, mantels, and grates in California and vicinity, and manufacturers in other States, of tiles and fireplace fixtures, in which the dealers agree not to purchase from manufacturers not members of the association, and not to sell unset tile to non-members for less than list prices, which are more than 50 per cent higher than prices to members, while the manufacturers agree not to sell their products or wares to non-members at any price, under penalty of forfeiture of membership, is an agreement or combination in restraint of trade within the meaning of the Sherman Law. *Montague & Co. v. Lowry*, 193 U. S., 39.

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94. Same—Where the Sales were Made Within the State.—Although the sales in question were within the State of California and although such sales constituted a very small portion of the trade involved, the agreement of manufacturers without the State not to sell to anyone but members was part of a scheme which included the enhancement of the price of unset tiles by dealers within the State, and the whole thing was so bound together that the transactions within the State were inseparable and became a part of a purpose which when carried out amounted to, and was, a combination in restraint of interstate trade and commerce. *Addyston Pipe & Steel Co. v. United States*, 175 U. S., 211, followed; *Hopkins v. United States*, 171 U. S., 578; *Anderson v. United States*, 171 U. S., 604, distinguished. *Ib.*

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95. Same—The parties aggrieved, being a firm of dealers in tiles, mantels, and grates, in San Francisco, whose members had never been asked to join the association and who had never applied for admission therein, and which did not always carry \$3,000 worth of stock, as required by the rules of the association as one of the conditions of membership are entitled to recovery under section 7 of the Sherman Law. *Ib.*

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- 96. Wooden Dishes.**—A contract made in pursuance of a combination of manufacturers, seeking to restrict the production and keep up the prices of wooden dishes throughout the country, whereby a manufacturer was guaranteed a certain sum as dividends on his stock in the central company in consideration of the closing of his factory for a year, was contrary to public policy and therefore unlawful, and would not be enforced by the courts. *Cravens v. Carter-Crume Co.*, 92 F., 479. 1—983
- 97. Beer—Combination of Brewing Companies to Prevent Competition in Manufacture, and to Control Sale and Fix Prices.**—A combination between several brewing companies forming a brewers' association, entered into for the purpose of preventing competition in the manufacture and sale of their product, fixing the price, and controlling the disposition of the same to retail dealers, providing that its members shall not sell such product at prices fixed by themselves nor below prices fixed by the association, and allotting the business of selling the same among them, and prohibiting any one of them from selling to customers allotted to another—is a trust or conspiracy in restraint of trade within the 3d section of the Sherman Law; and an attempt to coerce another company to enter the trust and obey its regulations is an invasion of private right, as well as inimical to the interests of the public; and the purposes and practices of such a combination or conspiracy are equally violative of the common law, which prevails in this District, and of which the 3d section of the statute is declaratory. *Leonard v. Abner-Drury Brewing Co.*, 25 App. (D. C.) Cases, 161. 3—13
- 98. Wall Paper—Combination to Control Sales.**—Plaintiff corporation was formed to control the output of 98 per cent of the wall paper mills of the United States, and to this end made contracts with them to buy their entire output at an agreed price. Plaintiff was nominally to make all sales to wholesalers and others, either directly or indirectly, at a uniform price, subject to an agreed scale of discounts, varying according to an arbitrary classification of buyers. The difference between the price at which the manufacturers sold to plaintiff and the price exacted from the buyers from plaintiff constituted the dividends to be distributed to plaintiff's shareholders, who were composed exclusively of those controlling the combining manufacturers, the stock being distributed in proportion to the size of the manufacturer's product the year before plaintiff was formed. The contract provided against the enlargement of the manufacturer's plants, and the only two manufacturers of wall paper machinery in the United States were induced to become parties by agreeing not to sell except to members of the combination. An agreement was also made with Canadian manufacturers to prevent cut-

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ting the price. Each member was required to deposit his shares with plaintiff, to be held as security to prevent a breach of the contract. Contracts were then made with jobbers and wholesalers, binding them to buy their entire requirements of plaintiff at specified prices and not to sell at less than the prices fixed by plaintiff on pain that if they did not enter into such contracts they could not buy at all. *Held*, that such transaction constituted an illegal combination in restraint of trade and interstate commerce in violation of the Sherman Law. *Continental Wall Paper Co. v. Voigt & Sons Co.*, 148 Fed., 946. 3—55

Combination of Dealers in and Manufacturers of Window Glass.—

A declaration alleged that defendant corporation was engaged in purchasing and contracting for the purchase of window glass from the manufacturers for certain-named jobbers and wholesale dealers doing business in different States who owned practically all of defendant's stock and controlled it; that such dealers comprised over 75 per cent of all those in the United States and sold more than 75 per cent of the window glass sold therein; that up to a certain date they were uncombined and competed freely with each other and with other wholesale dealers, but that on such date defendant entered into a combination and agreement with them and with a manufacturer which owned and operated factories in different States and manufactured 70 per cent of all the window glass made in the United States, by which defendant and such dealers agreed to buy window glass from no other manufacturer unless at materially lower prices; and such manufacturer agreed to sell to no other dealers except at higher prices than it charged them; that such agreement further limited the quantity of window glass to be purchased by each of such dealers to such as should be arbitrarily fixed by defendant and the manufacturer, and also gave them the power to arbitrarily fix excessive and unreasonable prices which were to be charged retail dealers, which prices such wholesale dealers agreed to observe under penalty of fines to be assessed against and paid by them; that it further restricted and limited the territory within which each of such dealers should sell to retail dealers, the object and effect of such combination and agreement being to restrain interstate commerce in window glass, to destroy competition therein, and to practically monopolize the same, especially in the better grades, which were practically all made by such manufacturer. *Held*, that the declaration charged a contract or combination in restraint of interstate commerce in violation of the Sherman Law which, as construed by the Supreme Court, makes unlawful any contract or combination in restraint of such trade or

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commerce, and not merely those which are in unreasonable restraint of trade and therefore illegal at common law. *Wheeler-Stenzel Co. v. Nat'l Window Glass Jobbers Ass'n*, 152 F., 871. 3—218

100. **Manufacturers of Licorice Paste.**—An agreement between defendants, manufacturers of licorice paste used in the manufacture of tobacco, provided that there should be no competition in price between them, and they from time to time agreed and maintained arbitrary and non-competitive prices for paste at which it was actually sold in interstate commerce. Defendants also agreed with and induced certain competitors in the business to establish and maintain arbitrary and non-competitive prices in excess of the normal and reasonable prices that would otherwise have prevailed, and also apportioned the interstate trade and commerce in such substance and of the customers of two of the manufacturers, arbitrarily fixing the amount of business they should do, and also so managed and agreed with another that the latter should only sell 1,000,000 pounds of paste during 1904 and not more than 50,000 pounds additional during each year for five years from December 31, 1903, and if he sold more he should pay to another of the defendant companies certain sums approximately equal to the profits of the excess. *Held*, that such agreement constituted an unlawful interference with interstate commerce, prohibited by the Sherman Law, declaring that every contract, combination, or conspiracy in restraint of trade among the several States or with foreign nations should be illegal. *U. S. Tobacco Co. v. American Tobacco Co.*, 163 F., 711. 3—425
101. **The Powder Trust—Manufacturers of Powder.**—In 1872 seven of the largest manufacturers of powder and other explosives in the United States organized what was called the "Gunpowder Trade Association," which, at its meetings and through committees, fixed prices which the constituent members were required to observe under penalty of fines. It also apportioned territory between its members, authorized the cutting of prices in particular localities in order to drive competitors out of the market or force them to come into the association, and apportioned the losses, if any, from such price cutting between the members. Subsequently other companies were taken into the association, until there were 17 members; and it was continued with some changes in the fundamental agreement, but none in its purposes or methods, until 1902. At that time E. I. du Pont de Nemours & Co., then the most influential member of the association, passed under a new management, was reorganized into the E. I. du Pont de Nemours Co., and its controlling stockholders and officers inaugurated the policy of acquiring

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the assets of other corporations and vesting ownership of their plants and the control of their business in their own company. So successfully was this policy carried out by the use of the methods of the association that within five years such company had acquired the stock of and caused to be dissolved 64 corporations engaged in the manufacture of powder and other explosives and controlled from 64 to 100 per cent of the trade of the United States in the different kinds of explosives sold, and also, directly or through subsidiary corporations as stockholders, controlled all of the other members of the association which was then dissolved. *Held*, that the formation of such a corporation and its subsidiaries and the adoption of the new policy was merely the continuance in a different form of the illegal association and that it constituted a combination in restraint of interstate commerce and to monopolize a part of the same, which was unlawful under the Sherman Law. *U. S. v. du Pont, etc., Co.*, 188 F., 149. 4—371

102. A corporation, known as the "Gulf Compress Co.," was organized under articles of incorporation which stated that it was to conduct a general storage and compress business. Its capital stock, originally \$25,000, was increased to \$1,000,000, of which \$600,000 was in the form of treasury stock. It appeared that the object of the corporation was to gain control of the compress business in the cotton producing area, by means of purchase or lease, exacting from lessor or vendor in every case a contract that such lessor corporation would not, for a term of years, engage in like business "within fifty miles of any compress operated by the" lessee, and that the lessor's members, "individually and collectively," would render every assistance "in discouraging unreasonable and unnecessary competition." *Held*, that such corporation, the Gulf Compress Co., so conducted, is unlawful and against public policy. Its operation tending to the unreasonable restraint of trade, the prevention of competition, and the establishment of a monopoly. *Anderson v. Shawnee Compress Co.*, 87 Pac. Rep., 318. 3—131

103. Same—Void Lease.—And where, in such case, a corporation, known as the "Shawnee Compress Co.," formed for the local compression of cotton, undertakes, because of the exigencies of its financial situation, to lease its entire property to said Gulf Compress Co. for a period of years, and in such lease, to agree not to engage in the business of compression of cotton within fifty miles of any plant operated by the Gulf company, and to aid such Gulf company "in discouraging unreasonable and unnecessary competition," *held*, that the execution of such lease will be perpetually enjoined, or if executed, the contract will be declared an unreasonable

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- restraint of trade, and therefore void on the ground of public policy. *Ib.* 3—182
104. A combination of ship-owners to prevent competition between members by maintaining uniform freight rates in South African trade, and to eliminate the possibility of competition with other lines by requiring shippers to pay forfeit money in case they patronized other lines, constituted a combination in restraint of competition and foreign commerce in contravention of the Federal Anti-Trust Statute. *Thomsen v. Union Castle Mail S. S. Co.*, 166 F., 253. 3—550
105. Combination Effected by Means of Selling Company.—Where a number of manufacturers situated in different States engaged in manufacturing an article sold in different States organize a selling company through which their entire output is sold, in accordance with an agreement between themselves, to persons only as enter into a purchasing agreement by which their sales are restricted, the effect is to restrain and monopolize interstate and foreign trade and commerce and is illegal under the Sherman Law, and so held in regard to a combination of wall paper manufacturers. *Continental Wall Paper Co. v. Voight*, 212 U. S., 255. 3—507
106. Same.—In determining whether a contract amounts to a combination in restraint of interstate trade in violation of the Sherman Law all the facts and circumstances will be considered. *Addyston Pipe Co. v. United States*, 175 U. S. 211, 247. *Ib.* 3—516
107. By Trade Agreement to Limit Output, Sales, and Prices.—A trade agreement under which manufacturers, who prior thereto were independent and competitive, combined and subjected themselves to certain rules and regulations, among others, limiting output and sales of their product and quantity, vendee and price; held in this case to be illegal under the Sherman Law. *Standard Sanitary Mfg. Co. v. U. S.*, 226 U. S., 48. 4—648
108. Of South African Steamship Lines to Maintain Prices, Unlawful.—Foreign owners of steamship lines, common carriers between New York and ports in South Africa, formed a combination, or "conference," to end competition among themselves and suppress it from without. They adopted uniform net tariff rates, and, for the purpose of constraining shippers to use their ships and avoid others, exacted deposits ("primage") of 10 per cent of and in addition to the net freight charges, to be repaid as rebates or "commissions" in each case upon the lapse of a period of many months, but then only if the shipper, up to the date set for repayment, had used the vessels of the coalition to the exclusion of all competitors. In respect of particular consignments the shipper's right to

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the refund was made similarly dependent on the "loyalty" of his consignee to vessels of the combination. The hold thus gained on shippers, through the accumulation of their deposits, enabled the coalition to maintain its tariff and custom, in general, while cutting rates with competitors in particular cases by means of "fighting ships." Several important rivals were gathered into the combination from time to time, and a virtual monopoly was effected. *Held*, that the combination violated the Sherman Law. *Thomsen v. Caysar*, 243 U. S., 85. 6—727

2. *Combinations, contracts, etc., eliminating competition in bidding.*

109. **Combination of Manufacturers—Dividing Territory and Allotting Contracts by Pretended Bids.**—The formation of a combination by a number of companies manufacturing iron pipe in different States, whereby the territory in which they operate (comprising a large part of the United States) is divided into "reserved" cities and "pay" territory, the reserved cities being allotted to particular members of the combination, free of competition from the others, though provision is made for pretended bids by the latter at prices previously arranged, and when all offers to purchase pipe in the pay territory are submitted to a committee, which determines the price, and then awards the contract to that member of the combination which agrees to pay the largest "bonus," to be divided among the others, is unlawful, both at common law and under the Sherman Law. *U. S. v. Addyston Pipe and Steel Co.*, 85 F., 271. 1—772

(Reversing, 78 Fed., 712 (1—631)).

110. **Combinations to Enter into Public Bidding for Contracts, but Where only One of the Combination Really Bids, the Others, Being Required to Bid Above Him.**—An agreement or combination between corporations engaged in the manufacture, sale, and transportation of iron pipe, under which they enter into public bidding for contracts, not in truth as competitors, but under an arrangement which eliminates all competition between them for the contract and permits one of their number to make his own bid, while the others are required to bid over him, is in violation of the Sherman Law, so far as it applies to sales for delivery beyond the State in which the sale is made. *Addyston Pipe and Steel Co. v. U. S.*, 175 U. S., 211. 1—1009

Affirming, 85 F., 271 (1—772).

111. **Same.**—A combination may illegally restrain trade by preventing competition for contracts and enhancing prices, although it does not prevent the letting of any particular contract. *Ib.*

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112. **Same.**—Where Goods are to be Delivered in the State.—A combination to restrain competition in proposals for contracts for the sale of certain articles which are to be delivered in the State in which some of the parties to the combination reside and carry on business is not, so far as those members are concerned, in violation of the Sherman Law, although the contract may be awarded to some party outside the State as the lowest bidder. *Ib.* 1—1041
113. **Same.**—Any agreement or combination which directly operates, not alone upon the manufacture, but upon the sale, transportation, and delivery of an article of interstate commerce, by preventing or restricting its sale, thereby regulates interstate commerce to that extent, and thus trenches upon the power of the national legislation, and violates the statute. *Ib.* 1—1036
114. **Same.**—When the direct, immediate, and intended effect of a contract or combination among dealers in a commodity is the enhancement of its price, it amounts to a restraint of trade in the commodity, even though contracts to buy it at the enhanced price are being made. *Ib.* 1—1038
115. **Same.**—The contracts considered in this case, set forth in the statement of facts and in the opinion of the court, relate to the sale and transportation to other States of specific articles, not incidentally or collaterally, but as a direct and immediate result of the combination entered into by the defendants; and they restrain the manufacturing, purchase, sale, or exchange of the manufactured articles among the several States, and enhance their value, and thus come within the provisions of the "act to protect trade and commerce against unlawful restraints and monopolies." *Ib.* 1—1036
116. **Same.**—The judgment of the court below, which perpetually enjoined the defendants in the court below from maintaining the combination in cast-iron pipe as described in the petition, and from doing any business under such combination, is too broad, as it applies equally to commerce which is wholly within a State as well as to that which is interstate or international only. *Ib.* 1—1041
117. **Agreement Between Live-Stock Buyers not to Bid Against Each Other, Etc.**—An agreement between corporations and individuals, etc., engaged in buying live stock at divers points throughout the United States, to refrain from bidding against each other in the purchase of cattle is a combination in restraint of trade; so also their agreement to bid up prices to stimulate shipments, intending to cease from bidding when the shipments have arrived, and the same result follows from the combination of defendants to fix prices upon and restrict the quantities of meat shipped to their agents or their customers. Being restriction upon competition such

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- agreements are a combination in restraint of trade. *U. S. v. Swift & Co.*, 122 F., 529. 2—237
118. Same.—Restraint of trade is not dependent upon any consideration of reasonableness or unreasonableness in the combination averred, nor is it to be tested by the prices that result from the combination. The statute has no concern with prices, but looks solely to competition and to the giving of competition full play by making illegal any effort at restriction upon competition. *Ib.* 2—244
119. Same.—A combination of a dominant proportion of the dealers in fresh meats throughout the United States not to bid against, or only in conjunction with, each other in order to regulate prices in and induce shipments to the live-stock markets in other States, to restrict shipments, establish uniform rules of credit, make uniform and improper rules of cartage, and to get less than lawful rates from railroads to the exclusion of competitors with intent to monopolize commerce among the States, is an illegal combination within the meaning and prohibition of the Sherman Law, and can be restrained and enjoined in an action by the United States. *Swift & Co. v. United States*, 196 U. S., 375. 2—641
120. Same.—It does not matter that a combination of this nature embraces restraint and monopoly of trade within a single State if it also embraces and is directed against commerce among the States. *Ib.*
121. Same.—The effect of such a combination upon interstate commerce is direct and not accidental, secondary, or remote as in *United States v. E. C. Knight Co.*, 156 U. S., 1. *Ib.*
122. Same.—Even if the separate elements of such a scheme are lawful, when they are bound together by a common intent as parts of an unlawful scheme to monopolize interstate commerce the plan may make the parts unlawful. *Ib.*
123. Same.—When cattle are sent for sale from a place in one State, with the expectation they will end their transit, after purchase, in another State, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock yards, and when this is a constantly recurring course, it constitutes interstate commerce, and the purchase of the cattle is an incident of such commerce. *Ib.*

3. Contracts, etc., in restraint of interstate trade or commerce.

124. Contracts, Combinations, etc., Against Public Policy and Void Under the Common Law.—The contracts, combinations in the form of trust or otherwise, and conspiracies in restraint of trade declared to be illegal in the Sherman Law, are the contracts, combinations, and conspiracies in restraint of trade that had been declared by the courts to be against

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public policy and void under the common law before the passage of that act. *U. S. v. Trans-Mo. Ft. Assn.*, 58 F., 58.
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Case reversed, 166 U. S., 290 (1—648).

125. **Same.**—The test of the validity of such contracts or combinations is not the existence of restriction upon competition imposed thereby, but the reasonableness of that restriction under the facts and circumstances of each particular case. Public welfare is first considered, and, if the contract or combination appears to have been made for a just and honest purpose, and the restraint upon trade is not specially injurious to the public, and is not greater than the protection of the legitimate interests of the party in whose favor the restraint is imposed reasonably requires, the contract or combination is not illegal. *Shiras*, district judge, dissenting on the ground that this rule is not applicable to corporations charged with public duties. 1—205
126. **Agreements Legal When Made Which Violate Act of 1890.**—The agreement of the Trans-Missouri Freight Association, in regard to establishing and maintaining railroad rates, though legal when made, became illegal on the passage of the Sherman Law, and acts done under it after that statute became operative were done in violation of it. *U. S. v. Trans-Mo. Ft. Assn.*, 166 U. S., 290. 1—648
127. **Contracts in Restraint of Trade—At Common Law.**—Contracts that were in unreasonable restraint of trade at common law were not unlawful in the sense of being criminal, or as giving rise to an action for damages to one prejudicially affected thereby, but were simply void and not enforceable. *U. S. v. Addyston Pipe and Steel Co.*, 85 F., 271. 1—772
128. **Same.**—The effect of the Sherman Law is to render such contracts, as applied to interstate commerce, unlawful in an affirmative or positive sense, and punishable as a misdemeanor, and also to create a right of civil action for damages in favor of persons injured thereby, and a remedy by injunction in favor both of private persons and the public against the execution of such contracts and the maintenance of such trade restraints. *Ib.* 1—781
129. **Contracts or combinations which impose any restraints whatever upon interstate commerce are unlawful under the Sherman Law;** and it is immaterial whether or not the restraint is a fair and reasonable one or whether it has actually resulted in increasing the price of the commodity dealt in. *U. S. v. Coal Dealers' Assn. of Cal.*, 85 F., 252. 1—749
130. **Contracts which operate as a restraint upon the soliciting of orders for, and the sale of, goods in one State, to be delivered from another, are contracts in restraint of interstate commerce within the meaning of the Sherman Law.** *U. S. v.*

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E. C. Knight Co., 15 Sup. Ct., 249; 156 U. S., 1, distinguished.
U. S. v. Addyston Pipe & Steel Co., 85 F., 271. 1—772

131. To render a combination unlawful under the Sherman Law, it need not be one which by its terms refers to interstate commerce, but it is sufficient if its purpose and effect are necessarily to restrain interstate trade. *Gibbs v. McNeeley*, 118 F., 120. 2—194
132. Every Contract, Combination, or Conspiracy, in Whatever Form, of Whatever Nature, and Whoever May be Parties to it, which Directly or Necessarily Operates in Restraint of Interstate Trade or Commerce.—Although the act of Congress known as the Sherman Law has no reference to the mere manufacture or production of articles or commodities within the limits of the several States, it embraces and declares to be illegal every contract, combination, or conspiracy, in whatever form, of whatever nature, and whoever may be parties to it, which directly or necessarily operates in restraint of trade or commerce among the several States or with foreign nations. *Northern Securities Co. v. United States*, 193 U. S., 330 (Harlan, Brown, McKenna, Day). 2—461
133. Same.—The act is not limited to restraints of interstate and international trade or commerce that are unreasonable in their nature, but embraces all direct restraints, reasonable or unreasonable, imposed by any combination, conspiracy, or monopoly upon such trade or commerce. *Ib.* 2—461
134. Railroad carriers engaged in interstate or international trade or commerce are embraced by the act. *Ib.* 2—461
135. Combinations, even among private manufacturers or dealers, whereby interstate or international commerce is restrained, or commerce are embraced by the act. *Ib.* 2—461
136. Every combination or conspiracy which would extinguish competition between otherwise competing railroads, engaged in interstate trade or commerce, and which would in that way restrain such trade or commerce, is made illegal by the act. *Ib.* 2—462
137. The natural effect of competition is to increase commerce, and an agreement whose direct effect is to prevent this play of competition restrains instead of promotes trade and commerce. *Ib.* 2—462
138. The Northern Securities Company combination is a "trust" within the meaning of the Sherman Law; but if not, it is a combination in restraint of interstate and international commerce, and that is enough to bring it under the condemnation of the act. *Ib.* 2—458
139. Every contract, combination, or conspiracy, the necessary effect of which is to stifle or to directly and substantially restrict competition in commerce among the States, is in restraint

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of interstate commerce and violates section 1 of the Sherman Law. *Whitwell v. Continental Tobacco Co.*, 125 F., 454.

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140. **Same.**—Every attempt to monopolize a part of interstate commerce, the necessary effect of which is to stifle or to directly and substantially restrict competition in commerce among the States, violates section 2 of the Sherman Law. *Ib.*

For what acts and combinations do not violate the act see same case, and COMBINATIONS, ETC., III.

141. **Monopolies Prohibited are Those Engaged in Interstate Commerce—Not Merely Because the Commodity is a Necessity of Life.**—The monopoly and restraint denounced by the Sherman Law, "to protect trade and commerce against unlawful restraints and monopolies," are a monopoly in interstate and international trade or commerce, and not a monopoly in the manufacture of a necessary of life. *U. S. v. E. C. Knight*, 156 U. S., 1.

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142. **Any Restraint of Interstate Trade or Commerce if Accomplished by Conspiracy.**—Section 1 of the Sherman Law, declaring illegal "every contract, combination in the form of trust, or otherwise, or conspiracy" in restraint of trade or commerce among the States, or with foreign nations, is not aimed at capital merely and combinations of a contractual nature, which by force of the title, "An act to protect trade and commerce against unlawful restraints and monopolies," are limited to such as the courts have declared unlawful, the words "in restraint of trade" having in connection with the words "contract," and "combination," their common-law significance; but the term "conspiracy" is used in its well-settled legal meaning, so that any restraint of trade or commerce, if to be accomplished by conspiracy, is unlawful, *U. S. v. Debs*, 64 F., 747.

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143. **Same—Construction.**—The construction of the statute is not affected by the use of the phrase "in restraint of trade," rather than one of the phrases "to injure trade" or "to restrain trade." *Ib.*

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144. **Same.**—The word "commerce," in the statute, is not synonymous with "trade," as used in the common-law phrase "restraint of trade," but has the meaning of the word in that clause of the Constitution which grants to Congress power to regulate interstate and foreign commerce. *Ib.*

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145. **Supreme Court does not Dissent from Above Conclusions.**—The court enters into no examination of the Sherman Law, on which the Circuit Court mainly relied to sustain its jurisdiction; but it must not be understood that it dissents from the conclusions of that court in reference to the scope of that act, but simply that it prefers to rest its judgment on the broader ground discussed in its opinion, believing it impor-

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tant that the principles underlying it should be fully stated and fully affirmed. *In re Debs*, 158 U. S., 564. 1—585

146. A Contract by which a corporation agrees to take the entire product of a number of persons, firms, and corporations engaged in mining coal and making coke in a certain district, which is intended for "western shipment," to sell the same at not less than a minimum price, to be fixed by an executive committee appointed by the producers, and to account for and pay over to such producers the entire proceeds above a fixed sum per ton, to be retained as "compensation"—the stated purpose being "to enlarge the western market"—and under which the shipments are made into other States, is one affecting interstate commerce, and is subject to the provision of the Sherman Law. *U. S. v. Chesapeake & O. Fuel Co.*, 105 F., 93. 2—34

Affirmed, 115 F., 610 (2—151).

147. Effect of Illegal Provisions—Divisibility.—Stipulations in a contract which are invalid as in restraint of trade, if capable of being construed divisibly, do not affect the validity of other provisions. *U. S. Consolidated Seeded Raisin Co. v. Griffin & Skelley Co.*, 126 F., 364. 2—288

See also CONTRACTS.

148. Contract Between Local and Long-Distance Telephone Companies for Exclusive Use of Lines.—A contract between a local telephone company and a long-distance company for a connection between their lines and the use of the local lines for the sending and receiving of long-distance messages, binding the local company not to permit any similar connection by any other long-distance company for a term of 99 years, thereby disabling it from giving its subscribers the benefit of competition in long-distance service and from extending its own service as authorized by its charter, was invalid, as tending to create a monopoly. *U. S. Tel. Co. v. Cent. Union Tel. Co.*, 202 F., 71. 4—886

149. Same—Power of Telephone Company to Extend Lines—Contract Preventing Adequate Service Unlawful.—Under Rev. Stat. Ohio, 1908, sec. 3455, conferring on telephone companies the power to extend their lines whenever and wherever the needs of the service and good business policy may dictate, the duty of a company to furnish reasonably adequate service is not confined to the date of its organization, but it is bound to keep pace with changing conditions as they may occur from year to year; and a contract disabling it from furnishing what may be adequate service is invalid. *Ib.* 4—886

150. Same—General System of Exclusive Contracts for Term Not Beyond Necessity, Might Be Justified.—A general system of exclusive contracts prima facie restraining competition, might be justified if they are for a term not beyond any such neces-

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- sity, as a 99-year contract for exclusive interchange of telephone business. *Ib.* 4—890
151. **Of Independent Producers of Slate, With Power to Determine Production, Prices, and Persons to Whom Sales Might Be Made, Unlawful.**—A combination by most of the previously independent producers of Sea-Green slate, having a quality and demand peculiar to itself, whereby the power to determine the amount of its production by each, its prices, and the persons to and by whom sales shall be made, is placed in a central body, though it is more or less in competition with black slate, and though such power may not have been unduly exercised to raise prices, is a combination in restraint of trade within the prohibition of section 1 of the Sherman Law. *O'Halloran v. American Sea Green Slate Co.*, 207 F., 103. 5—302
152. **Same—Control of the Towing Business on the Great Lakes, by the Means Charged, an Unlawful Combination.**—The Great Lakes Towing Co. was organized in 1899, and shortly afterwards acquired in its own name, or that of controlled companies, the property and good will of practically all local tug operators in 14 of the principal lake ports, not including Lake Ontario. These purchases were made under contracts which bound the sellers not to engage in the towing or wrecking business on any of the Great Lakes except Ontario for a period of five years. In this manner the company acquired some 120 tugs. It also made a contract with another owner whose tugs were not bought, by which he bound himself, in consideration of an annual payment to him in cash, not to do any towing on the Great Lakes for a term of five years. Whenever local competition later developed, the company at least met any cut rates at that port, even at a serious loss, until competition was ended, after which rates were restored. It adopted a system of exclusive contracts with vessel owners by which, in consideration of their giving it all their towing and wrecking business throughout one or more seasons at all ports where it did business, it gave them a large discount from its tariff rates, with a guaranty that the contract rates, taken together, should not exceed the sum of the rates they might otherwise obtain by reason of the cutting of rates by competitors. By means of such contracts it obtained control of 90 per cent or more of the towing business at such ports, and, together with the other means stated, acquired a practical monopoly of such business. *Held*, that such company and its controlled companies were clearly organized and operated with the purpose and effect of securing a monopoly, and constituted a combination in restraint of interstate and foreign commerce in violation of the Sherman law. *U. S. v. Great Lakes Towing Co.*, 208 F., 742.

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153. **Of Dealers Who Bought 86 per cent of Milk Sold in Certain Districts for Shipment to Boston, and Fixed the Price to be Paid Therefor. Held, to be in Undue Restraint of Trade and Unlawful.**—An indictment alleging that the defendants, who bought 86 per cent of the milk sold in specified country districts by the producers there for shipment to Boston and vicinity and Worcester, engaged in an unlawful combination in undue restraint of trade by agreeing upon the prices which they would pay for milk at the country points, thereby eliminating competition as to price between the defendants, *Held*, to show a combination which was prima facie unreasonably extensive and therefore illegal. *U. S. v. Whiting*, 212 F., 471. 5—454.
154. **Same—Consolidation of Five Harvester Companies, Producing from 80 to 85 per cent of Harvesting Machinery, a Combination in Restraint of Trade.**—Defendant, International Harvester Co., was a consolidation of five harvester companies, which together produced from 80 to 85 per cent of all the harvesting machinery sold in the United States. Some or all of them were prosperous, and there had previously been keen competition between them. One of the combining companies, of which defendant owned all the stock, was changed in name, and made the sole selling agent for all of the products of the several plants. Defendant was not overcapitalized, and its methods of doing business were in general fair to competitors. It purchased all of the stock of another large harvester company, but permitted it to continue to do business, and to advertise as an independent and competing concern. *Held*, that defendant was organized to eliminate competition between the combining companies, and was from the beginning a combination in restraint of interstate commerce and to monopolize such commerce in harvesting machinery, and illegal, as in violation of the Sherman Law. *U. S. v. International Harvester Co.*, 214 F., 1001. 5—658
155. **Of Motion-Picture Producers and Importers—Refusal to Sell Films to Any but Members of, in Violation of Sherman Law.**—Motion-picture producers and importers, some of whom had patents upon articles, such as the positive films, cameras, and projecting machines, formed a combination to regulate the trade. They created a board of censor films, and established exchanges, refusing to sell films to operators of theaters who did not belong to their exchanges, and who did not pay royalties on their machines to the combination, regardless of when or from whom they were purchased. The restrictions were attempted to be justified as a protection of the patent rights of the parties to the combination. *Held*, that such combination was invalid as a violation of the Sherman Law. *U. S. v. Motion Picture Patents Co.*, 225 F., 807. 6—215

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156. **Same—By Owners and Booking Agents of Theaters Under Which Only Performers Booked by Such Agents, and Appearing Only in Such Theaters, Would Be Employed, in Violation of the Sherman Law.**—A number of vaudeville theaters scattered over the United States were arranged into circuits, and it was the practice to book performers over the whole or part of one circuit under one contract, requiring them to pass from State to State, taking with them certain paraphernalia and stage properties. The owners of such theaters and their booking agents entered into a combination or conspiracy in restraint of their own business, whereby the theater owners were not to employ performers not booked through booking agents, and the booking agents were not to act for any theater employing any other booking agent, or employing any performer who played outside such circuits, or who had as a representative any person who had obtained employment for a performer outside such circuit. Any theater employing such a performer would be blacklisted, and the booking agents would not act for it. *Held*, that the effect of a monopoly of such business upon interstate commerce was not so inconsiderable as not to come within the Sherman Law. *Marienelli, IAm. v. United Booking Office*, 227 F., 160. 5—949
157. **A Can Company, Which Acquired 95 Plants, Making 90 per cent of Cans Then Manufactured, Although Intended to Restrain Trade, Will Not Be Dissolved so Long as it Does Not Attempt to Illegally Use Its Potential Powers.**—Defendant, American Can Co., was organized in 1901 with capital stock, common and preferred, of \$88,000,000, \$78,000,000 of which was issued to promoters in payment for 95 plants which made probably 90 per cent of the cans then manufactured for sale in the United States and options on which had been secured by the promoters. They paid for the plants in cash or its equivalent in stock at one-half par value \$23,500,000. New plants with new machinery of equal capacity could have been built for not to exceed \$10,000,000. For some of the plants they paid many times the value of the physical property. They also required the sellers, if individuals, or if corporations, their officers, to sign agreements not to again engage in the business for 15 years within 3,000 miles from Chicago. Defendant also acquired patents on can-making machinery and made contracts with the principal manufacturers of the best machinery intended to prevent others from buying it for a term of years. During the first year defendant largely increased prices; but, the effect being to induce others to enter the business, it abandoned the policy. About two-thirds of the plants purchased were closed. By the end of 12 years, when the Government brought suit for its dissolution, defendant was perhaps marketing no more cans than the aggregate of its

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competitors. For some years before the suit defendant did not attempt to do away with competition, or to monopolize the business, but its methods and prices were fair and its standing good with customers and competitors. The most of the concerns absorbed by it and of others afterwards acquired went out of existence. *Held*, that the organization and early methods of defendant were intended and calculated to restrain competition in the manufacture and sale of cans, and to monopolize the same, and were clearly illegal as in violation of §§ 1 and 2 of the Sherman Law. *U. S. v. American Can Co.*, 230 F., 901. 6—513

158. **The Securing, by the Corn Products Refining Co., of All Glucose Factories, and of Starch Factories Producing 64 per cent of Total Production, Held to be an Illegal Combination.**—Defendant, Corn Products Refining Co., which on its organization in 1906 acquired control of all the glucose plants in the United States and of starch factories producing 64 per cent of the total production, *Held* an illegal combination in restraint of interstate trade, and to monopolize the same, in violation of the Sherman Law, on evidence showing that the purpose of its organization was to prevent competition, and that the power acquired by the combination was exercised to prevent by unfair means any new competitors from entering the field, and to drive out those entering or already engaged in the business, through profit-sharing contracts with customers which required them to continue to purchase from it exclusively for more than a year afterwards to entitle them to the benefit of the contract in any particular purchase; by a contract with a new competitor, induced by threats of entering into competition in another branch of the competitor's business, by which it obtained one-half the glucose production of the new plant and sold the same at a loss through secret agents purporting to represent independent makers for the purpose of preventing others from entering the business; by the sale of mixed sirups, of which it acquired control of more than half the production, at little or no profit, and at prices which left no profit to independent mixers, who were compelled to buy their glucose in the market; and by other price manipulations and local discriminations, all of which were more or less successful in maintaining its monopoly. *U. S. v. Corn Products Refining Co.*, 234 F., 967. 6—562

4. *Live-stock associations and exchanges, etc.*

159. **An Association of Commission Merchants.**—An association of men engaged in receiving, buying, selling, and handling, as commission merchants, live stock received at the Kansas City stockyards from, and sold for shipment to, various

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States and Territories, which yards furnished the only available public market for that purpose for an exceedingly large area, and which by its rules fixed a minimum rate of commissions to be charged by members of the association, and prohibited the employment by any commission firm or corporation of more than three persons to travel and solicit business, and prohibited the sending of prepaid telegram or telephone messages quoting the markets, and shut out all dealings and business intercourse between members and non-members, and boycotted and blacklisted persons attempting to carry on business without joining the exchange, thus effectually preventing them from securing or transacting business, *held* to be an illegal combination to restrict, monopolize, and control that class of trade and commerce. *U. S. v. Hopkins*, 82 F., 529. 1—725

Reversed, 171 U. S., 578 (1—941).

160. **Same—Reasonableness of Restraints.**—The act of Congress is aimed against all restraints of interstate commerce, and its purpose is to permit commerce between the States to flow in its natural channels, unrestricted by any combinations, contracts, conspiracies, or monopolies whatsoever. The reasonableness of the restrictions in a given case is immaterial. *Ib.* 1—735

161. **Agreement Between Live-Stock Buyers Not to Bid Against Each Other, etc.**—An agreement between corporations and individuals, etc., engaged in buying live stock at divers points throughout the United States, to refrain from bidding against each other in the purchase of cattle is a combination in restraint of trade; so also their agreement to bid up prices to stimulate shipments, intending to cease from bidding when the shipments have arrived, and the same result follows from the combination of defendants to fix prices upon and restrict the quantities of meat shipped to their agents or their customers. Being restriction upon competition, such agreements are a combination in restraint of trade. *U. S. v. Swift & Co.*, 122 F., 529. 2—237

Affirmed, 196 U. S., 375 (2—641).

162. **Same.**—Restraint of trade is not dependent upon any consideration of reasonableness or unreasonableness in the combination averred, nor is it to be tested by the prices that result from the combination. The statute has no concern with prices, but looks solely to competition and to the giving of competition full play by making illegal any effort at restriction upon competition. *Ib.* 2—244
163. **A combination entered into by independent meat dealers to secure less than lawful freight rates, with the intent to monopolize commerce in fresh meat among the several States,**

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is forbidden by the Sherman Law. *Swift & Co. v. United States*, 196 U. S., 375. 2—643

5. Conspiracy to injure in business.

164. **Printing and Mailing Circulars.**—The action of an association of manufacturers in adopting a resolution denouncing a dealer in the product they manufactured (shingles), who bought and shipped such product to customers in other States and foreign countries, and in printing such resolution in circulars and mailing the same to other manufacturers and customers of the dealer, whereby his business was injured, constituted an illegal combination or conspiracy in restraint of interstate and foreign commerce, and gives the person injured a right of action in a circuit court of the United States, under the Sherman law, to recover the damages sustained. *Gibbs v. McNeeley*, 102 F., 594. 2—25
165. **Associations of Retail Lumber Dealers, Which Issue Official Reports, etc., Unlawful.**—Associations of retail lumber dealers, which issue and distribute among their members "official reports," containing lists of wholesale dealers doing an interstate business, who have made sales direct to consumers, and soliciting information as to other such sales, for the purpose and with the effect of influencing members receiving them to cease buying from such wholesale dealers, are combinations in restraint of interstate trade and commerce, and unlawful, under the Sherman law. *U. S. v. Eastern States Retail Lum. Deal. Ass'n*, 201 F., 584. 4—861
166. **Association of Retail Lumber Dealers, Circulating "Official Reports," etc., Unlawful.**—Held in this case that the circulation of a so-called official report among members of an association of retail dealers calling attention to actions of listed wholesale dealers in selling direct to consumers, tended to prevent members of the association from dealing with the listed dealers referred to in the report, and to directly and unreasonably restrain trade by preventing it with such listed dealers, and was within the prohibitions of the Sherman Law. *Eastern States Ret. Lum. Deal. Ass'n v. U. S.*, 234 U. S., 609. 4—871
167. **Same—Of Retail Lumber Dealers to Suppress Competition by Wholesale Dealers.**—The concerted, systematic, and periodic circulation by associations of retail lumber dealers among their members through a so-called "official report" of confidential information of the names of wholesale lumber dealers engaged in interstate trade reported as soliciting from, or selling directly to, consumers, such members, upon learning of any such instances, being called upon to report the same promptly, supplying detailed information as to the particulars of the transaction, violates the prohibitions of the Sher-

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man law against combinations in restraint of interstate trade and commerce, where, although each retailer is left free to act as he sees fit, these reports were circulated with the intention and effect of causing the retailers to withhold their patronage from the listed wholesalers, and thus directly and appreciably impairing their interstate trade. *Ib.*, 58 L. Ed., 1490. 4—871

168. **Of Master Plumbers, Formed Prior to Passage of the Sherman Law, Became Illegal Upon Its Passage.**—The National Association of Master Plumbers was formed prior to 1890 and at once took measures to prevent manufacturers and dealers in plumbers' supplies from selling direct to consumers, by resolving not to patronize such manufacturers and dealers as refused to agree to such restrictions, and by adopting a system of espionage. This policy was continued after 1890, and so extended as to bind the members to restrict their purchases to manufacturers and dealers who sold only to members of the association, excluding all other customers, although they might also be master plumbers. Members were listed in a book issued and distributed by the association. *Held* that, on the enactment of the Sherman Law, the association became an illegal combination in restraint of interstate trade, and that any member who thereafter joined or affiliated with it, with knowledge of its illegal purposes and methods, was guilty of a criminal offense under section 1 of the law. *Knauer v. U. S.*, 237 F., 19. 6—701

6. *Stockholding companies or corporations.*

169. **Holding Companies to Vote Stock in the Interests of a Railroad Combine.**—Where one company (The Georgia Company of North Carolina) acquired a majority of the stock of the Central Railroad Company of Georgia, which it deposited with a trust company of New York, and transferred to the Terminal Company, a system composed of several competing lines of railroads, which latter company and the Georgia Company relinquished to the trust company any right they might have to vote such stock. *Held*, That the trust company was a mere stakeholder and that the relinquishment did not entitle it to a vote. *Clarke v. Central R. R. & Banking Co. of Ga.*, 50 F., 338. 1—17
170. **Same—Disqualifying Interests.**—The fact that the Terminal Company has no appreciable interest in the stock of the Central Railroad Company, because of a mortgage on the railroad executed by the Terminal Company, does not remove the objection to its voting in person or by representative in the election of the directors of that railroad company, in view of the fact that it has large pecuniary interests in two directly competing lines of railroad. *Ib.* 1—28

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171. **Same—Sherman Law.**—Transactions of this character are within the spirit, if not within the letter, of the "Sherman Law." *Id.*
172. **Northern Securities Co.**—Any contract or combination by which a majority of the stock of two railroad companies owning and operating parallel and competing interstate lines of road is transferred to a corporation organized for the purpose of holding and voting the same and receiving the dividends thereon, to be divided pro rata among the stockholders of the two companies so transferring their stock, directly and substantially restricts interstate trade and commerce, and is in violation of the Sherman Law, since it destroys any motive for competition between the two roads; and it is immaterial that each company has its own board of directors, which nominally directs its operations and fixes its rates. *U. S. v. Northern Securities Co.*, 120 F., 721. 2—215
173. **Northern Securities Company—Corporation Organized to Hold Majority of Stock of Two Competing and Parallel Lines of Railroad for the Purpose of Preventing Competition.**—Stockholders of the Great Northern and Northern Pacific Railway companies—corporations having competing and substantially parallel lines from the Great Lakes and the Mississippi River to the Pacific Ocean at Puget Sound—combined and conceived the scheme of organizing a corporation, under the laws of New Jersey, which should hold the shares of the stock of the constituent companies, such shareholders, in lieu of their shares in those companies, to receive, upon an agreed basis of value, shares in the holding corporation. Pursuant to such combination the Northern Securities Company was organized as the holding corporation through which that scheme should be executed; and under that scheme such holding corporation became the holder—more properly speaking, the custodian—of more than nine-tenths of the stock of the Northern Pacific, and more than three-fourths of the stock of the Great Northern, the stockholders of the companies, who delivered their stock, receiving, upon the agreed basis, shares of stock in the holding corporation. *Held*, That the arrangement was an illegal combination in restraint of interstate commerce and fell within the prohibitions and provisions of the Sherman law, and it was within the power of the circuit court, in an action, brought by the Attorney General of the United States after the completion of the transfer of such stock to it, to enjoin the holding company from voting such stock and from exercising any control whatever over the acts and doings of the railroad companies, and also to enjoin the railroad companies from paying any dividends to the holding corporation on any of their stock held by it. *Northern Securities Co. v. United States*, 193 U. S., 197. 2—338

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174. **Same.**—Necessarily, the constituent companies ceased, under this arrangement, to be in active competition for trade and commerce along their respective lines, and became, practically, one powerful consolidated corporation, by the name of a holding corporation, the principal, if not the sole, object for the formation of which was to carry out the purpose of the original combination under which competition between the constituent companies would cease. *Ib.* 2—457
175. **Same.**—A combination by stockholders in two competing interstate railway companies to form a stockholding corporation which should acquire, in exchange for its own capital stock, a controlling interest in the capital stock of each of such railway companies violates the Sherman law, which declares illegal every combination or conspiracy in restraint of interstate commerce and forbids attempts to monopolize such commerce or any part of it. (48 L. ed., 679.) 2—342
176. **Same.**—Where no individual investment is involved, but there is a combination by several individuals separately owning stock in two competing railroad companies engaged in interstate commerce to place the control of both in a single corporation which is organized for that purpose expressly and as a mere instrumentality by which the competing railroads can be combined, the resulting combination is a direct restraint of trade by destroying competition, and is illegal within the meaning of the Sherman Law. (Brewer, concurring.) *Ib.* 2—341
177. **Holding Company Exchanging Its Stock for the Stock of Oil Companies.**—In 1899 the stockholders of the Standard Oil Co. of New Jersey owned a majority of the stock of 19 other corporations in the same proportions that they owned the stock of the Standard Co., and those 20 corporations controlled, by the ownership of the majority of their stock or otherwise, many other corporations. Each of these corporations was engaged in some part of the business of producing, buying, refining, transporting, and selling petroleum and its products, and they were conducting about 30 per cent of the production of crude oil and more than 75 per cent of the business of purchasing, refining, transporting, and selling petroleum and its products in this country. Many of them were engaged in commerce in these articles among the several States and with foreign nations, and were naturally competitive.

During the 10 years prior to 1879 the seven individual defendants had acquired control of many corporations, partnerships, and refineries that had been competing in this business, had placed the majority of the stock of those corporations and the interests in property and business thus obtained in various trustees, to be held and operated by them for

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the stockholders of the Standard Oil Co. of Ohio, one of the 19 companies in which the individual defendants were principal stockholders, and had thereby suppressed competition among these corporations and partnerships. In 1879 they and their associates caused all the trustees to convey their interests in the stock, property, and business of all these corporations to five trustees, to be held, operated, and distributed by them for the stockholders of the Standard Co. of Ohio. From 1879 until 1892 they prevented these corporations and others engaged in this business, of which they secured control, from competing in this commerce by causing the control of their operations, and generally of a majority of their stocks, to be held in trust for the stockholders of the Standard Co. of Ohio, and from 1892 until 1899 they accomplished the same result by a similar stockholding device and by the joint equitable ownership of the majority of the stocks of the corporations.

In the year 1899 the seven individual defendants and their associates caused the majority of the stock of the 19 corporations to be transferred to the Standard Oil Co. of New Jersey in exchange for its stock, so that the latter company thereby acquired the legal title to a majority of the stock of each of the 19 companies, the control of these companies and of all the companies which they controlled, and the power to fix the rates of transportation, and the purchase and selling prices of petroleum and its products, which all these corporations should pay and receive in the conduct of their business in commerce among the States and with foreign nations. Since that exchange of stock the seven individual defendants have been and are stockholders and officers of the Standard Co. of New Jersey, which has exercised and is still using that power, and by its use it has prevented and is still preventing competition in commerce among the States and with foreign nations among these corporations.

Held, the transaction constituted a combination and conspiracy in restraint of and to monopolize commerce among the States and with foreign nations in violation of sections 1 and 2 of the Sherman Law, and the Government is entitled to an injunction against the further continuance and operation thereof. *U. S. v. Standard Oil Co.*, 173 F., 191. 3—717

7. Patent and copyright monopolies—Illegal combinations and contracts.

178. A corporation organized for the purpose of securing assignments of all patents relating to "spring-tooth harrows," to grant licenses to the assignors to use the patents upon payment of a royalty, to fix and regulate the price at which such harrows shall be sold, and to take charge of all litigation.

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- tion and prosecute all infringements of such patents, is an illegal combination, whose purposes are contrary to public policy, and which a court of equity should not aid by entertaining infringement suits brought in pursuance thereof. *National Harrow Co. v. Quick*, 67 F., 130. 1—443
- 179. Corporation Organized to Receive Assignments of Patents.**—A combination among manufacturers of spring-tooth harrows, by which each manufacturer assigns to a corporation organized for the purpose the patents under which he is operating, and takes back an exclusive license to make and sell the same style of harrows previously made by him, and no other, all the parties being bound to sell at uniform prices, held to be an unlawful combination for the enhancement of prices and in restraint of trade. *National Harrow Co. v. Hench*, 76 F., 667. 1—610
- Affirmed, 83 F., 36 (1—742).
- 180. Same.**—Though the fact that several patentees are exposed to litigation justifies them in composing their differences, they can not make the occasion an excuse or cloak for the creation of monopolies to the public disadvantage. *Ib.* 1—743
- 181. A combination among manufacturers of spring-tooth harrows,** whereby a corporation organized for the purpose becomes the assignee of all patents owned by the various manufacturers, and executes licenses to them, so as to control the entire business and enhance prices, is void both as to the assignments and licenses, so that the corporation can not maintain a suit against one of its assignors, who violates the agreement, for infringement. *National Harrow Co. v. Hench*, 84 F., 226. 1—746
- 182. An agreement by the members of a publishers' association** controlling 90 per cent of the book business of the country, under which all agreed not to sell to anyone who would cut prices on copyrighted books, nor to anyone who should be known to have sold to others who cut prices, etc., was an agreement relating to interstate trade or commerce within the Sherman Law. *Mines v. Scribner*, 147 F., 927. 2—1035
- 183. Same—Conspiracy—Restraint of Trade.**—Defendants became members of an association of book publishers controlling 90 per cent of the book business of the country, which association adopted a rule that they would not sell to anyone who cut prices on copyrighted books, nor to anyone who should be known to have sold to others at cut prices. A blacklist was kept containing the names of such persons, and no one on the blacklist could buy any books of anybody in the scheme. Held, That such scheme constituted a conspiracy in restraint of interstate trade or commerce. *Ib.* 2—1036
- 184. Same—Copyright—Effect—Extent of Rights Acquired.**—The rights acquired by publishers of copyrighted books under the copyright law did not justify them in combining and agree-

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ing that their books should be subject to the rules laid down by the united owners, one of which was that no member of the association should sell any books to a blacklisted purchaser who was known to cut prices. *Ib.* 2—1036

185. **License Contracts by Patentee in District where Patent Declared Illegal and in Creating a Fund to Crush Competition.**—License contracts entered into by the owner of a patent on a rubber tire, which patent had been adjudged invalid by the Circuit Court of Appeals for the Sixth Circuit, with all of the large manufacturers of such tires in the United States, all of whom were engaged in interstate commerce, to manufacture the same on a royalty and to sell at prices above the then market price, and providing for a system of rebates, and for the appointment of a board to receive one-half of the royalties, to be used in purchasing said tires and selling them at prices deemed to be for the best interest of all. *Held*, that such contracts went beyond the rights of complainant under its patent monopoly in raising and maintaining prices in the States composing the sixth Federal circuit, in which the monopoly had no practical existence, and in creating a fund to be used to crush competition by outside manufacturers, as well in the sixth circuit as elsewhere, and were illegal and void as creating a combination in restraint of interstate trade and commerce, in violation of the Sherman Law. *Rubber Tire Wheel Co. v. Milwaukee Rubber Works Co.*, 142 F., 531. 2—855

186. **The Fact That Patents Are Issued to Various Persons Does Not Entitle Them to Combine to Restrain Manufacture or Sale of Patented Article.**—In a prosecution of manufacturers of coaster brakes for combination in violation of sections 1 and 2 of the Sherman Law, certain counts of the indictment alleged that defendant, the New Departure Co., was the owner of a basic patent for making such brakes, and issued licenses to manufacture thereunder, charging, however, that the defendant corporations were separately the owners of patents and patent rights for improvements in the coaster brake and other bicycle and motorcycle accessories, but that the defendants, to effectuate their plan to restrain trade, feigned the making of a license agreement ostensibly covering a part, but not the whole, of the coaster brake manufactured by the New Departure Co., charging that the pretended license agreements, which were to be entered into simultaneously by the New Departure Co. as ostensible licensor with the remaining corporation defendants as ostensible separate licensees, were to be in all respects uniform in character, were to contain all schedules of uniform and non-competitive prices, restrictions upon all sales, etc. *Held*, that such averments negatived an inference that the licenses were for a basic patent, but that the conditions were imposed on com-

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petitors in good faith and without an intention to violate the statute, since the fact that patents are issued to various persons or corporations, does not entitle them to combine to restrain the manufacture or sale of the patented article or to enhance prices in restriction of commerce. *U. S. v. New Departure Mfg. Co.*, 204 F., 113. 5—154

187. **Controlling Output by Trade Agreement.**—A trade agreement involving the right of all parties thereto to use a certain patent, which transcends what is necessary to protect the use of the patent or the monopoly thereof as conferred by law and controls the output and price of goods manufactured by all those using the patent, is illegal under the Sherman Law. *Standard Sanitary Mfg. Co., v. U. S.*, 226 U. S., 48. 4—648
See also, COMBINATIONS, ETC., 338-343.

8. Railroads—Steamship Lines—Rates, etc.

188. **The Sherman Law Applicable to Railroads.**—The provisions respecting contracts, combinations, and conspiracies in restraint of trade or commerce among the several States or with foreign countries, contained in the Sherman Law, "to protect trade and commerce against unlawful restraints and monopolies," apply to and cover common carriers by railroad. *U. S. v. Trans-Mo. Ft. Assn.*, 166 U. S., 290. 1—648
189. **Contracts Between Railroads Affecting Rates.**—A contract between railroads in restraint of interstate trade or commerce is prohibited, even though the contract is entered into between competing railroads only for the purpose of thereby affecting traffic rates for the transportation of persons and property. *Ib.* 1—667
190. **Same—No Authority Therefor Under Act to Regulate Commerce.**—The act of February 4, 1887, "to regulate commerce," is not inconsistent with the Sherman Law, as it does not confer upon competing railroad companies power to enter into a contract in restraint of trade and commerce, like the one which forms the subject of this suit. *Ib.* 1—689
191. **Right to Deviate from Rates Prescribed.**—The right of a railroad company in a joint traffic association to deviate from the rates prescribed, provided it acts on a resolution of its board of directors and serves a copy thereof on the managers of the association, who, upon its receipt, are required to "act promptly for the protection of the parties hereto," does not relieve the association from condemnation as an illegal restraint of competition, as the privilege of deviating from the rates would be exercised upon pain of a war of competition against it by the whole association. *U. S. v. Joint Traffic Assn.*, 171 U. S., 505. 1—869
 Reversing 76 F., 895 (1—615).

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192. An agreement of railroad companies which directly and effectually prevents competition is, under the statute, in restraint of trade, notwithstanding the possibility that a restraint of trade might also follow unrestricted competition, which might destroy weaker roads and give the survivor power to raise rates. *Ib.* 1—938
193. The statute applies only to contracts whose direct and immediate effect is a restraint upon interstate commerce, and not to contracts made to promote legitimate business, though they may indirectly or incidentally affect such commerce. *Ib.* 1—931
194. Similar to *Trans-Missouri Case*.—So far as the establishment of rates and fares is concerned, there is no substantial difference between the agreement in this case and the one set forth in the *Trans-Missouri case*. *Ib.* 1—925
195. Congress, with regard to the interstate commerce, and in the course of regulating it in the case of railroad corporations, has the power to say that no contract or combination shall be legal which shall restrain trade and commerce by shutting out the operation of the general law of competition. *Ib.* 1—932
196. Any contract or combination between interstate carriers which directly and substantially restrict the right of such a carrier to fix its own rates independently of its natural competitors places a direct restraint upon interstate commerce in that it tends to prevent competition and is in violation of the act, whether the rates actually fixed be reasonable or unreasonable. *U. S. v. Northern Securities Co.*, 120 F., 721. 2—215
197. Contract or Combination Prescribing Rates to be Maintained.—Any contract or arrangement between railroad companies for the purpose and having the effect of preventing competition by fixing rates to be maintained by the parties is in violation of the provisions of the Minnesota Anti-Trust Act of 1899, which is substantially the same language as the Sherman Law. *Minnesota v. Northern Securities Co.*, 123 F., 692. 2—246
198. Agreements Between Railroads to Raise Rates upon Certain Class of Shipments.—When a number of railroads acting under articles of organization by concert of agreement and action advance the rates upon shipments of a particular class throughout all the territory to which their organization and influence with similar organizations extend, and when they actually advance such rates and exact the same of shippers, it is of no consequence that they have a stipulation in such articles that each and all members can at will and at any time withdraw from the agreement. Such a combination is in restraint of trade. *Tift v. Southern Railway Co.*, 138 F., 753. 2—734, 746
- See also* CARRIERS.

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- 199. Combination of Railroads to Prevent Competition, Pooling Passenger Receipts—No Relief in Equity Against Ticket Brokers.**—In a suit by a railroad company to enjoin the defendants, who were ticket brokers, from dealing in special tickets issued by complainant on account of the Pan-American Exposition, which were by their terms non-transferable, it appeared from the showing made on a motion for a preliminary injunction that complainant was a member of a combination known as the "Trunk Line Association," formed by a number of railroads operating in different States for the purpose of preventing competition; that the passenger receipts of all such roads were pooled and divided on an agreed basis; and that the special rates made on account of the exposition were fixed, and the terms of the tickets which were the basis of the suit were prescribed by such association through its passenger committee. *Held*, That such combination was illegal, as in violation of the Sherman Law and that complainant could not invoke the aid of a Federal court of equity for the protection of rights claimed under contracts which were the direct result and evidence of such unlawful combination. *Delaware, L. & W. R. Co. v. Frank*, 110 F., 689. 2—82
- 200. A combination to secure less than lawful freight rates, entered into by independent meat dealers with the intent to monopolize commerce in fresh meat among the several States, is forbidden by the Sherman Law.** *Swift & Co. v. United States*, 196 U. S., 375. 2—843
- 201. Combination to Prevent Building of Competing Railroad.**—A combination between railroad companies for the avowed purpose and with the effect of preventing the threatened building of a competitive road for the transportation of coal in interstate commerce, by purchasing, through a corporation, the stock of which they purchased, large coal properties, the prior owners of which had pledged their tonnage to the projected road, thus retaining to certain of the combined roads such tonnage and the tonnage of other coal operators tributary thereto who had no other means of transporting their product, was a combination in restraint of trade and commerce among the several States, and unlawful under the Sherman Law, against which the United States is entitled to injunctive relief under section 4 of the act. (Per Buffington, C. J.) Lanning, Circuit Judge, dissenting on the pleadings and evidence. *U. S. v. Reading Co.*, 183 F., 471. 3—931
- 202. Unification of Railroad Terminals—Whether Permissible.**—Whether the unification of terminals in a railroad center is a permissible facility in aid of interstate commerce, or an illegal combination in restraint thereof, depends upon the intent to be inferred from the extent of the control secured over

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the instrumentalities which such commerce is compelled to use, the method by which such control has been obtained, and the manner in which it is exercised. *U. S. v. Terminal R. R. Assn. of St. Louis*, 224 U. S., 395. 4—484

203. The unification of Substantially Every Terminal Facility by which the traffic of St. Louis is served is a combination in Restraint of Interstate trade within the meaning and purposes of the Sherman Law, as the same has been construed by the Supreme Court in the Standard Oil (221 U. S., 1) and Tobacco (221 U. S., 106) cases. *Ib.* 4—484
204. The history of the unification of the terminal systems in St. Louis in the Terminal Railroad Association shows an intent to destroy the independent existence of the terminal systems previously existing, to close the door to competition, and to prevent the joint use or control of the terminals by any non-proprietary power. *Ib.* 4—488
205. In this case held that the practices of the Terminal Association in not only absorbing other railroad corporations but in doing a transportation business other than supplying terminal facilities operated to the disadvantage of interstate commerce. *Ib.* 4—495
206. This court bases its conclusion that the unification of the terminals in St. Louis is an illegal restraint on interstate traffic, and not an aid thereto, largely upon the extraordinary situation at St. Louis and upon the physical and topographical conditions of the locality. *Ib.* 4—494
207. Although the proprietary companies of a combination unifying terminals may not use their full power to impede free competition by outside companies, the control may so result in methods inconsistent with freedom of competition as to render it an illegal restraint under the Sherman Law. *Ib.* 4—491
208. A provision in an agreement for joint use of terminals by non-proprietary companies on equal terms does not render an illegal combination legal where there is no provisions by which the non-proprietary companies can enforce their right to such use. *Ib.* 4—489
209. Combination of Terminal Systems.—The combination and unification of the terminal facilities at St. Louis under the exclusive ownership and control of less than all the railway companies under compulsion to use them—the inherent conditions being such as to prohibit any other reasonable means of railway access to that city—violates the provisions of sections 1 and 2 of the Sherman Law, in that it constitutes a contract or combination in restraint of commerce among the States, and an attempt to monopolize such commerce which must pass through the gateway at St. Louis. *Ib.*, 56 L. Ed., 810. 4—497

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- 210. The Mere Combining, Not Necessarily a Forbidden Restraint.**—The mere combining of several independent railway terminal systems into one does not necessarily operate as a forbidden restraint, under the Sherman Law, upon the interstate commerce which must use them. *Ib.*, 56 L. Ed., 810. 4—497
- 211. Control of One Competing Railway Company by Another, by Means of Stock Ownership, Illegal.**—The Sherman Law prohibits the creation of a single dominating control in one corporation whereby natural and existing competition in interstate trade is suppressed; such prohibition extends to the control of competing interstate railroads effected by a holding company as in the *Northern Securities Case* and to the purchase by one of two competing railroad companies of a controlling portion, even if not, as in this case, a majority of the stock of the other. *U. S. v. Union Pacific R. R. Co.*, 226 U. S., 85. 4—675
- 212. Same—Ownership of 46 per cent of Stock of Southern Pacific, by Union Pacific, with Resulting Control Thereof, Illegal.**—The purchase by the Union Pacific Railroad Co. of 46 per cent of the stock of the Southern Pacific Co. with the resulting control of the latter's railway system by the former, is an illegal combination in restraint of interstate trade within the purview of the Sherman Law, and must be dissolved. *Ib.* 4—675
- 213. Same—Necessity for Entrance into San Francisco, no Justification for Combination.**—The necessity of the Union Pacific to obtain an entrance to San Francisco and other California points over the lines of the Southern Pacific was not such as to justify the combination complained of in this case in view of the provisions for a continuous railroad to the Pacific coast and for interchange of traffic without discrimination, contained in the acts of July 1, 1862 (12 Stat., 489, 495) and of July 2, 1864 (13 Stat., 356, 362). *Ib.* 4—680
- 214. In Large Corporations, a Compact United Ownership of Less Than Half the Stock May Amount to Dominant Control.**—While in small corporations a majority of stock may be necessary for control, in large corporations, where the stock is distributed among many stockholders, a compact united ownership of less than half may be ample to control and amounts to a dominant interest sufficient to effect a combination in restraint of trade within a reasonable construction of the Sherman Law. *Ib.* 4—684
- 215. While Railway May Acquire Portion of Non-Competing System, it May Not Acquire Substantial Portion of Competing Line.**—Although a railroad corporation may lawfully acquire that portion of another railroad which connects, but does not compete, with any part of its own system, it may not acquire the entire system a substantial portion of which does compete with its lines. *Ib.* 4—682

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- 216. Same—May be Illegal Under Sherman Law, Although Legal Under Laws of State Where Formed.**—Congress is supreme over interstate commerce, and a combination which contravenes the Sherman Law is illegal although it may be permissible under, and within corporate powers conferred by it, the laws of the State where made. *Ib.* 4—676
- 217. Same—Decisions in Trans-Missouri and Joint Traffic Cases Were Correct.**—The opinions in the Standard Oil (221 U. S., 1) and Tobacco (221 U. S., 106) Cases contain no suggestion that the decisions of the court in the Trans-Missouri (163 U. S., 290) and Joint Traffic (171 U. S., 505) Cases were not correct in holding the combinations involved to be illegal while applying the rule that the statute should be reasonably construed. *Ib.* 4—674
- 218. By Common Carriers by Means of Stock Control.**—A combination which places railroads engaged in interstate commerce in such a relation as to create a single dominating control in one corporation whereby natural and existing competition in interstate commerce is unduly restricted or suppressed constitutes a restraint of interstate commerce forbidden by the Sherman Law, whether accomplished through a holding company or through a direct transfer of a dominating stock interest from one company to the other. *U. S. v. Union Pacific R. R. Co.*, 57 L. Ed., 124. 4—675
- 219. Same—Acquisition of Union Pacific by Southern Pacific by Means of Stock Control.**—The acquisition by the Union Pacific Railroad Co., then operating a line from Missouri River points to Portland, and thence to San Francisco by steamship connection, of 46 per cent of the outstanding capital stock of the Southern Pacific Co., with the intent and result, not only of securing the California connection at Ogden over the Central Pacific line, and thus effecting such a continuity of the Union Pacific and Central Pacific lines from the Missouri River to San Francisco as was contemplated by the acts of July 2, 1862 (12 Stat., 489), July 2, 1864 (13 Stat., 326), and June 20, 1874 (18 Stat., 111), but of obtaining the dominating control of the entire Southern Pacific system, consisting of lines by water and rail, together forming a transportation system from New York and other Atlantic ports to San Francisco and Portland and other Pacific coast points, with various branches and connections, besides a steamship line from San Francisco to Panama and from San Francisco to the Orient, and a half interest in another line between the two latter points, which system was actively competing with the purchasing road for interstate business, large in volume, though small in comparison with the total traffic carried, creates, contrary to the Sherman Law, a combination in restraint of interstate trade. *Ib.* 4—677

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- 220. Dominating Control of One Competing Railway by Another May Be Legal in State Where Acquired but Illegal Under Sherman Act.**—A purchase by one railway company of a dominating stock interest in another, though legal in the State where made, and within corporate powers conferred by State authority, can not escape condemnation under the Sherman Law, if it contravenes the prohibitions of that statute against combinations and conspiracies in restraint of trade, enacted by Congress in the exercise of its supreme authority over interstate commerce. *Ib.* 4—676
- 221. Of Coal-Mining Company and a Railroad, Through a Holding Company, Not Unlawful Unless Unlawful Methods or Practices Are Resorted To.**—A combination of a coal-mining company and a railroad company, by whose line the coal of the mining company can be transported from the mines, through the medium of a holding company which owns the stock of both other companies, is not necessarily unlawful, as in violation of the Sherman Law, unless unlawful methods or practices are resorted to, which tend to create a monopoly or restrain competition. *U. S. v. Reading Co.*, 226 F., 268. 6—347
- 222. Same—The Uniting, by Stock Ownership, of the Reading and Central Railroad of New Jersey, with Other Roads and Coal Companies, Constituted a Combination in Restraint of Trade.**—The Reading Co., which owned all of the stock of the Philadelphia & Reading Railway Co. and of the Philadelphia & Reading Coal & Iron Co., a large producer of anthracite coal, bought a controlling interest in the Central Railroad Co. of New Jersey, which also owned the greater part of the stock of the Lehigh & Wilkes-Barre Coal Co. The two railway companies did not compete in the carriage of coal, because their lines extended into different parts of the mining region and reached different mines; but the two coal companies together mined and sold 20 per cent of the total production of anthracite coal, and the same was sold largely in the same markets. *Held*, that the uniting of such companies in the same ownership created a combination in restraint of interstate trade, in violation of the Sherman Law. *Ib.* 6—353
- 223. Of Coal-Carrying Railroads and Coal-Mining Companies, for Carrying Carrier-Owned Coal.**—The United States filed a bill to enforce the provisions of the Sherman Law, against an alleged combination of railroad and coal-mining companies formed to restrain competition in the production, sale and transportation in interstate commerce of anthracite coal. The bill alleged a general combination through an agreement between the carrier defendants to apportion the coal tonnage between themselves on a scale of percentages; a combination through the medium of one of the mining companies to prevent the construction of a new competing

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coal-carrying road from the anthracite district to tidewater; a combination by a series of identical contracts with independent coal operators for sale of their total product; and certain contributory combinations between some but not all of the defendants. The bill was filed prior to the enactment of the commodities clause of the Hepburn Act of June 29, 1906.

Held: Any relief against a continuance of the transportation of carrier owned coal under the commodities clause must be sought in a proceeding based upon that act and can not be obtained in this suit. U. S. v. Reading Co., 226 U. S., 324. 4—712

On the record, the Supreme Court agrees with the trial court that the Government has failed to show any contract or combination for the distribution of coal tonnage between defendants. 4—715

The defendants did combine to unreasonably restrain interstate commerce in violation of the Sherman Law, through the Temple Iron Co., to prevent the construction of the competing coal-carrying railroad. 4—723

224. Same—Series of 65 Per Cent Contracts Part of Concerted Scheme.—In this case *held* that a series of identical contracts between interstate carriers with a great majority of the independent coal operators to market all the coal of the latter for all time at an agreed percentage of tidewater price were all parts of a concerted scheme to control the sale of the independent output and were unreasonable contracts in restraint of interstate trade within the prohibition of the Sherman Law. *Ib.* 4—726

225. Of Carriers Possessing Substantial Monopoly in Transportation of Anthracite Coal.—Carriers possessing a substantial monopoly of the transportation facilities between the anthracite deposits in Pennsylvania and the tide-water distributing points, and also controlling with the aid of their subsidiary coal-mining and selling companies nearly three-fourths of the annual supply of anthracite, must be deemed to have combined to restrain interstate trade, contrary to the Sherman Law, where, with the purpose and result of defeating the construction of a projected independent company railway line, and thus preserving their existing monopoly of transportation, they purchased, through another corporation whose capital stock they first acquired, the coal properties and collieries controlled by certain independent coal operators who were the chief supporters of the projected railway enterprise, although the acquisition of such property, considered alone, may have been lawful under the local law. *U. S. v. Reading Co., 57 L. Ed., 243.* 4—721

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- 226. Same—Parts of Scheme, Considered Alone, May Be Lawful; but Taken Together Are Parts of Illegal Combination.**—Parts of a general scheme of railway carriers to combine to restrain the freedom of interstate commerce, either in the transportation or sale of anthracite contrary to the Sherman Law, however lawful when considered alone, e. g., the acquisition of the stock of another corporation, and the purchase by it of the capital stock of certain coal properties and collieries, are parts of an illegal combination under the statute, which it is the duty of the courts to dissolve, irrespective of how the legal title to the shares is held. *Ib.* 4—736
- 227. Contract Between Competing Coal-Carrying Railroads for Division of Coal Traffic and for Interchange of Use of Roads, Unlawful.**—The Hocking Valley Railway Co. and the Toledo & Ohio Central Railway Co. each owns and operates a line of road in Ohio from Toledo into the Hocking coal fields in the southeastern part of the State, and from a connection with such lines the Kanawha & Michigan Railway Co. owns and operates a line across the river into the Kanawha coal fields in West Virginia. The principal freight business of all the roads is the carriage of coal mined in such fields and destined for lake ports or points farther to the north and west. About 1899 the Hocking Valley Co., through stock purchases and otherwise, acquired control of both the other roads, and also of a large number of coal companies owning land and mines tributary thereto. Five trunk lines, again, together purchased a controlling stock interest in the Hocking Valley Co., and the entire combination was practically managed and controlled by a committee appointed by them. In an action by the State against the Hocking Valley Co., which is an Ohio corporation, such combination was adjudged illegal, and the defendant was required to dispose of its controlling interest in the other roads and also in the mines. To meet this situation, a contract was entered into between two of the trunk line stockholders, viz., the Chesapeake & Ohio Railway Co., operating a line from the coast on the south side of the Ohio River to Cincinnati and a subsidiary line from there to Chicago, its main line touching that of the Kanawha & Michigan Co., and the Lake Shore & Michigan Southern Railway Co., operating a line from Buffalo, through Toledo to Chicago, pursuant to which the Chesapeake & Ohio Co. acquired the controlling interest in the Hocking Valley Co., and the Lake Shore Co. in the Toledo & Ohio Central Co., while the controlling interest in the Kanawha & Michigan Co. and the coal companies was divided between them, the contract providing that each should have the right to use the road, and that its north-bound coal traffic should be fairly divided between the Hocking Valley Co. and the Toledo & Ohio Central Co.

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Held, that such contract did not change the essential character of the previous arrangement, but was inconsistent with the established rule requiring freedom of competition in interstate commerce and in violation of the Sherman Law. *U. S. v. L. S. & M. S. Ry. Co. et al.*, 203 F., 295, 309. 5—263

- 228. Of Parallel Coal-Carrying Railroads Reaching Same Coal Fields, or Different Coal Fields Where Competing Coal is Produced, Violates the Sherman Law.**—Coal-carrying railroads extending into the same coal fields, although reaching different mines, or extending into different fields where competing coal is produced, which traverse generally parallel lines and reach either directly or through their connections the same markets in other States, must be regarded as natural competitors in interstate commerce, and any arbitrary methods between them or between them and the coal companies, by which such natural competition is eliminated, is in violation of the Sherman Law. *Ib.* 5—247

- 229. Same—Combining of Railroad and Coal-Mining Interests Under a Single Controlling Power, Unlawful.**—The combination of a number of coal-carrying railroads, which were natural competitors, and the acquiring by them of large coal mining interests tributary to their several lines, so that both railroad and mining interests were under a single controlling power, the result being a division of the traffic and the elimination of competition as to interstate as well as domestic shipments, and a discrimination against all new and independent mines, was one in restraint of interstate commerce and created a monopoly of a part of such commerce in violation of the Sherman Law. *Ib.* 5—258

- 230. To Monopolize Steamship Transportation Partly Within and Partly Without United States, Within the Sherman Law.**—A combination made in the United States between carriers to monopolize certain transportation partly within and partly without the United States is within the prohibition of the Sherman Law, and also within the jurisdiction of the criminal and civil law of the United States even if one of the parties combining be a foreign corporation. *U. S. v. Pacific & Arctic R. & N. Co.*, 228 U. S., 105. 5—281

- 231. Between Steamship Companies for Passenger Business—Employment of "Fighting Ships."**—The employment by a combination of steamship companies engaged in the trans-Atlantic passenger business of so-called "fighting ships," or extra vessels, which, when a vessel not owned by a member of the combination, made lower rates than one which did, was placed at a berth near such vessel, and met or went below such rates, *held* to constitute an undue and unreasonable restraint of foreign trade and commerce, and an attempt to monopolize such commerce, in violation of the Sherman Law. *U. S. v. Hamburg-American Line*, 216 F., 973. 4—900

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9. Labor combinations.

- 232. The Sherman Law Applies to Combinations of Laborers.**—The Sherman Law applies to combinations of laborers as well as of capitalists. *U. S. v. Workmen's Amalg. Council*, 54 F., 994. 1—110
Case affirmed, 57 F., 85 (1—184).
- 233. Same—Lawful Combinations Turned to Unlawful Purposes.**—The fact that a combination of men is in its origin and general purposes innocent and lawful is no ground of defense when the combination is turned to the unlawful purpose of restraining interstate and foreign commerce. *Ib.* 1—117
- 234. Same—Labor Strikes.**—A combination of men to secure or compel the employment of none but union men becomes a combination in restraint of interstate commerce, within the meaning of the statute, when, in order to gain its ends, it seeks to enforce, and does enforce, by violence and intimidation, a discontinuance of labor in all departments of business, including the transportation of goods from State to State, and to and from foreign nations. *Ib.* 1—117
- 235. Same—Injunction—When Granted.**—Where an injunction is asked against the interference with interstate commerce by combinations of striking workmen, the fact that the strike is ended and labor resumed since the filing of the bill is no ground for refusing the injunction. The invasion of rights, especially where the lawfulness of the invasion is not disclaimed, authorizes the injunction. *Ib.* 1—112
- 236. Railroad Employees—Agreements not to Handle Property of Railroad Against which Action is Taken.**—Rule 12 of an association of locomotive engineers, styled the "Brotherhood of Locomotive Engineers," which provides "that hereafter, when an issue has been sustained by the grand chief, and carried into effect by the Brotherhood of Locomotive Engineers, it shall be recognized as a violation of obligations if a member of the Brotherhood of Locomotive Engineers who may be employed on a railroad run in connection with or adjacent to said road, to handle the property belonging to said railroad or system in any way that may benefit said company with which the Brotherhood of Locomotive Engineers are at issue, until the grievances or issues or differences of any nature or kind have been amicably settled"—is plainly a rule or agreement in restraint of trade or commerce, and violative of section 1 of the Sherman Law. *Waterhouse v. Comer*, 55 F., 149. 1—119
- 237. Same—Conspiracy—Section 5440; R. S.**—Construing several clauses of the interstate-commerce law recited in the opinion with section 5440 of the Revised Statutes, it follows that a combination of persons, without regard to their occupation,

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which will have the effect to defeat the provisions of the interstate-commerce law, inhibiting discriminations in the transportation of freight and passengers, and further to restrain the trade or commerce of the country, will be obnoxious to the penalties therein prescribed. *Ib.* 1—180

- 238. Same—Receivers—Advice of Court.**—In this case, the movants having avowed their purpose, in open court, to submit to the construction to be made by the court relating to rule 12 of the brotherhood, the receiver is directed to enter into an appropriate contract with them, subject to the general operation of this decision with reference to said rule. *Ib.* 1—182
- 239. A combination of labor organizations whose professed object is to arrest the operation of the railroads whose lines extend from a great city into adjoining States until such roads accede to certain demands made upon them, whether such demands are in themselves reasonable or unreasonable, just or unjust, is an unlawful conspiracy in restraint of trade and commerce among the States, within the Sherman Law, and acts threatened in pursuance thereof may be restrained by injunction, under section 4 of the law.** *U. S. v. Elliott*, 62 F., 801. 1—262
- Demurrer overruled, 64 F., 27 (1—311).
- 240. Same—Interference with Mails and Interstate Commerce.**—A combination by railroad employees to prevent all the railroads of a large city engaged in carrying the United States mails and in interstate commerce from carrying freight and passengers, hauling cars, and securing the services of persons other than strikers, and to induce persons to leave the service of such railroads, is within section 1 of the Sherman Law, and is illegal. *U. S. v. Elliott*, 64 F., 27. 1—311
- 241. Combination of Railroad Employees Interfering with Operation of Railroad in Hands of a Receiver—Instigating Strike.**—Maliciously inciting employees of a receiver, who is operating a railroad under order of the court, to leave his employ, in pursuance of an unlawful combination to prevent the operation of the road, thereby inflicting injuries on its business, for which damages would be recoverable if it were operated by a private corporation, is a contempt of the court. *Thomas v. Cin., N. O. & T. P. Ry. Co.*, 62 F., 803. 1—266
- 242. Same—Combination to Compel Breach of Contract.**—A combination to inflict pecuniary injury on the owner of cars, operated by railway companies under contracts with him, by compelling them to give up using his cars, in violation of their contracts, and, on their refusal, to inflict pecuniary injury on them by inciting their employees to quit their service, and thus paralyze their business, the existence of the contracts being known to the parties so combining, is an unlawful conspiracy. *Ib.* 1—286

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- 243. Same—Boycott.**—A combination by employees of railway companies to injure in his business the owner of cars operated by the companies by compelling them to cease using his cars by threats of quitting and by actually quitting their service, thereby inflicting on them great injury, where the relation between him and the companies is mutually profitable, and has no effect whatever on the character or reward of the services of the employees so combining, is a boycott and an unlawful conspiracy at common law. *Ib.* 1—287
- 244. Same**—A combination to incite the employees of all the railways of the country to suddenly quit their service, without any dissatisfaction with the terms of their employment, thus paralyzing utterly all railway traffic, in order to starve the railroad companies and the public into compelling an owner of cars used in operating the roads to pay his employees more wages, they having no lawful right so to compel him, is an unlawful conspiracy by reason of its purpose, whether such purpose is effected by means usually lawful or otherwise. *Ib.* 1—290
- 245. Same—Restraint of Interstate Commerce.**—Such combination, its purpose being to paralyze the interstate commerce of the country, is an unlawful conspiracy, within the Sherman Law, declaring illegal every contract, combination, or conspiracy in restraint of trade or commerce among the several States. *U. S. v. Patterson*, 55 Fed., 605, disapproved. *Ib.* 1—291
- 246. Same—Obstructing Mails.**—Such combination, where the members intend to stop all mail trains, as well as other trains, and to delay many, in violation of Revised Statutes, section 8995, punishing any one willfully and knowingly obstructing or retarding the passage of the mails, is an unlawful conspiracy, although the obstruction is effected by merely quitting employment. *Ib.* 1—291
- 247. Combination or Conspiracy to Prevent Passage of Trains—Obstruction of Interstate Commerce.**—Any combination or conspiracy on the part of any class of men who by violence and intimidation prevent the passage of railroad trains engaged in interstate commerce is in violation of the Sherman Law, declaring illegal every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the States. *In re Grand Jury*, 62 F., 840. 1—301
- 248. Mail—Obstructing Passage of Mail Trains.**—It is a violation of section 995, Revised Statutes, declaring it an offense to knowingly and willfully obstruct or retard the passage of the mail, for one to prevent the running of a mail train as made up, though he is willing that the mail car shall go on, and his purpose is other than to retard the mails. *Ib.* 1—305

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- 249. Same.**—The railway is a great public highway, and the duty of the railroad company as a common carrier is first to the public. The road must be kept in operation for the accommodation of the public if it is possible to do so with the force and appliances within reach. Any negligence in this respect is not excused by temporary difficulties capable of being promptly removed. *Ib.* 1—306
- 250. Same.**—Where the transportation of the mails and interstate commerce has long been interrupted by the refusal of the employees of the railway company to move trains carrying Pullman cars, it is the duty of the railway company to use every effort to move the mails and interstate commerce, without regard to the make-up of regular trains; and any willful failure to perform this duty is a violation of the statute. *Ib.* 1—306
- 251. Railway Employees—Strikes for the Purpose of Injuring a Third Party.**—It is unlawful for the employees of railway companies to combine and quit work for the purpose of compelling their employer to withdraw from his relations with a third party, for the purpose of injuring that third party. They have, however, a right to organize for mutual benefit and protection, and for the purpose of securing the highest wages and the best conditions they can command. They may appoint officers, who shall advise them as to the course to be taken in their relations with their employer, and they may, if they choose, repose in their officers authority to order them, or any of them, on pain of expulsion from their union, peaceably to leave the employment because the terms thereof are unsatisfactory. *Thomas v. Railway Co.*, 62 F., 817, followed. *U. S. v. Cassidy*, 67 F., 698. 1—452
- 252. Strike—Obstruction of Mails—Restraint of Interstate Trade or Commerce.**—A strike, or a preconcerted quitting of work, by a combination of railroad employees is, in itself, unlawful if the concerted action is knowingly and willfully directed by the parties to it for the purpose of obstructing and retarding the passage of the mails, or in restraint of trade and commerce among the States. *Ib.* 5—37
- 253. A combination of labor organizations and the members thereof, to compel a manufacturer whose goods are almost entirely sold in other States, to unionize his shops and on his refusal so to do to boycott his goods and prevent their sale in States other than his own until such time as the resulting damage forces him to comply with their demands, is, under the conditions of this case, a combination in restraint of interstate trade or commerce within the meaning of the Sherman Law, and the manufacturer may maintain an action for threefold damages under section 7 of that law.** *Loewe v. Lawlor*, 208 U. S., 292. 3—340

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254. A combination by members of labor organizations to destroy an existing interstate traffic in hats by preventing the manufacturers, through the instrumentality of a boycott, from manufacturing hats intended for transportation beyond the State, and to prevent their vendees in other States from reselling the hats so transported, and from further negotiating with the manufacturers for the purchase and transportation of such hats from the place of manufacture to the various places of destination, is a combination "in restraint of trade or commerce among the several States," within the meaning of the Sherman Law, the members of which are liable for the threefold damages which, under section 7 of that law, may be recovered by those injured in business or property by violations of the act, although a negligible amount of intrastate business may be affected in carrying out the combination and although the members of the combinations are not themselves engaged in interstate commerce. *Ib.* 3—340

255. To Boycott Sale of Manufactured Articles.—If it be shown that individuals have combined together to induce a manufacturer engaged in interstate commerce to conduct his business as they wish, and upon his refusal further combine not only to prevent him from manufacturing articles intended for interstate commerce, but also to prevent his vendees in other States from reselling the articles which they had imported from the State of manufacture, or from further negotiating for the purchase and intertransportation of such articles, the combiners intending thereby to destroy or obstruct an existing interstate traffic, such combination of individuals must be held to have essentially obstructed the free flow of commerce between the States, and is in violation of the Sherman Law, and when such obstruction is shown to have brought about an injury to a person's business, damages may be recovered, although the impelling motive of the combination was an effort to better the condition of the combiners, which, except for the Sherman Law, might be proper and lawful. *Lawlor v. Loewe*, 187 F., 524.

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256. United Mine Workers of America an Unlawful Organization.—The United Mine Workers of America is an unlawful organization because of its principles as set forth in its constitutions, obligations of its members, and rules which (1) require its members to surrender their individual freedom of action; (2) seek to require in practical effect all mine workers to become members, whether desirous of doing so or not; (3) to control and restrict, if not destroy, the right of the mine owner to contract with his employees independent of the organization; (4) to exclude his right to employ non-

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union labor if he desires; (5) to limit his right to discharge, in the absence of contract, whom he pleases, when he pleases, and for any cause or reason that to him seems proper; and (6) assumes the right through its officers to control the mine owner's business by shutting down his mine, and calling out his men upon indefinite strike in obedience to their obligation to the union, whether the men desire to quite work or not, whenever such officers deem it to the best interests of the union and regardless of his rights or interests, or the loss, direct and indirect, which he may sustain. It is also unlawful because of its procedure and practices, in that (1) it seeks to create a monopoly of mine labor such as to enable it as an organization to control the coal mining business of the country; and (2) has by express contract joined in a combination and conspiracy with a body of rival operators, resident in other States, to control, restrain, and to an extent at least destroy the coal trade of West Virginia, and by the admission of its officers has spent 14 years' time and hundreds of thousands of dollars in an effort to accomplish such purpose. *Hitchman Coal & Coke Co. v. Mitchell*, 202 F., 545. 5—572

Reversed, 214 F., 685. *But see* 245 U. S., 229.

257. Of Labor Unions Which Require, by Oath, Surrender by Their Members of Their Individual Freedom of Action, Unlawful.—

In their relation to their respective members, labor unions can not undertake to require, by oath, obligation, constitution, or rule, a surrender by such members of their individual freedom of action, and, when they seek to do so, they become illegal combinations in restraint of trade. *Ib.* 5—546

258. Same—Legality of Labor Union, to be Determined from Its Constitution, By-laws, or Rules.—The question of the legality of a labor union combination is to be determined from an examination of the union's constitution, by-laws, or rules, as they may be called, and, where some of such rules are lawful, yet, if others unlawful in character are of such weight and importance as to dominate the course of the union's action, or if the lawful and unlawful ones are so interdependent or intermingled as to render their separation impracticable, the organization becomes wholly illegal as in restraint of trade. *Ib.* 5—546

259. Same—Labor Unions Are Governed by the Same Rules of Law as Are Combinations of Capital in Restraint of Trade.—Neither a labor union nor its members may, under the law, use any means of coercion or intimidation to compel others to join the union, or to prevent a member from leaving the union if he desires or otherwise to interfere with the inherent right of the individual, whether a member or not, to dispose of his own labor or capital according to his own will; and in their rela-

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- tions to the general public as consumers of the products of labor and capital such unions are governed by the same rules of law as to combinations in restraint of trade as are combinations of capital. *Ib.* 5—547
260. Combined Action of Labor Unions in Circulating "We Don't Patronize" or "Unfair" Lists, Containing Names of Those Under Ban, Within Provisions of the Sherman Law.—Irrespective of compulsion or even agreement to observe its intimation, the circulation of a "we don't patronize" or "unfair" list manifestly intended to put the ban upon those whose names appear therein, among an important body of possible customers, combined with a view to joint action and in anticipation of such reports, is within the prohibition of the Sherman Law, if it is intended to restrain and does restrain commerce among the States.—*Lawlor v. Loewe*, 235 U. S., 534. 5—422
261. Same—Action of Labor Unions in Regard to Circulating "Unfair Lists," Boycotts, Union Labels, and Strikes Forbidden by the Sherman Law.—The Supreme Court agrees with the courts below that the action of unions and associations to which defendants belonged in regard to the use and circulation of "we don't patronize" and "unfair dealer" lists, boycotts, union labels and strikes, amounted to a combination and conspiracy forbidden by the Sherman Law. *Ib.* 5—423
262. Of Labor Unions Refusing to Work Where Non-Union Finish is Used if Interstate Commerce is Restrained, is in Violation of the Sherman Law.—A combination between local unions of organizations of carpenters and joiners, by which their members are pledged to refuse to work on any job where trim or finish made in a non-union shop is used, is in restraint of trade and commerce, and, if it affects interstate commerce, is in violation of the Sherman Law, and it is immaterial that the combination is not directed against any particular concern or dictated by any malicious motive. *Irving v. Neal et al.*, 209 F., 476. 5—393

III. NOT PROHIBITED.

1. Agreements, combinations, etc., only incidentally affecting interstate commerce.

263. Agreements to Raise Prices of Lumber, Not Involving an Absorption of the Entire Traffic.—An agreement between a number of lumber dealers in different States to raise the price of lumber 50 cents per thousand feet in advance of the market price can not operate as a restraint upon trade within the meaning of the Sherman Law, unless such agreement involves

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an absorption of the entire traffic and is entered into for the purpose of monopolizing trade in that commodity with the object of extortion. *U. S. v. Nelson*, 52 F., 646. 1—77

But see COMBINATIONS, ETC., 25-32.

- 264.** A combination between all the lumber manufacturers of a city to raise and maintain the price of lumber to local consumers, and to refuse to sell lumber to consumers who purchase any part of their supply from outside mills, some of such mills supplying the local market being situated in another State, is not in violation of the Sherman Law as in restraint of interstate commerce, its effect on such commerce being indirect and incidental only. *Ellis v. Inman, Poulsen & Co.*, 124 F., 956. 2—268

Reversed, 131 F., 182 (2—577).

- 265.** Apportionment of Territory—Agreement Not to Compete—Iron Pipe.—The combination of several corporations engaged in the manufacture of cast-iron pipe whereby they agree not to compete with each other in regard to work done or pipe furnished in certain States and Territories, and, to make effectual the objects of the association, agree to charge a bonus upon all work done and pipe furnished within those States and Territories, which bonus was to be added to the real market price of the pipe sold by those companies, was not a violation of the Sherman Law, as it affected interstate commerce only incidentally. *U. S. v. Addyston Pipe and Steel Co.*, 78 F., 712. 1—631

Reversed, 85 F., 271 (1—772); 175 U. S., 211 (1—1009). *See* COMBINATIONS, ETC., 109-116.

- 266.** Same.—In the examination of such a contract, fraud and illegality are not to be presumed, but must be proved, as in all other cases. *Ib.* 1—647

- 267.** Acts, contracts, and combinations which promote, or only incidentally or indirectly restrict competition in commerce among the States, while their main purpose and chief effect are to foster the trade and increase the business of those who make and operate them, are not in restraint of interstate commerce, or violative of section 1 of the Sherman Law. *Whitwell v. Continental Tobacco Co.*, 125 F., 454. 2—271

- 268.** Same.—Attempts to monopolize a part of commerce among the States which promote or only incidentally or indirectly restrict competition in interstate commerce, while their main purpose and chief effect are to increase the trade and foster the business of those who make them, were not intended to be, and were not, made illegal or punishable by section 2 of the Sherman Law, because such attempts are indispensable to the existence of any competition in commerce among the States. *Ib.* 2—276

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269. A combination is not illegal as in violation of the Sherman Law merely because it may indirectly, incidentally, or remotely restrain interstate trade or tend toward monopoly, if its main purpose and chief effect are to promote the business and increase the trade of the parties in a legitimate way. *Bigelow v. Calumet & Hecla Mining Co.*, 167 F., 712.
3—605
270. A combination, the sole object of which is to manufacture an article of common necessity, is not, without more, a violation of the Sherman Law, prohibiting combinations in restraint of interstate commerce. *Monarch Tobacco Works v. American Tobacco Co.*, 165 F., 779.
3—542
271. Consolidation of Corporations.—The Sherman Law, prohibiting trusts and monopolies, does not condemn the purchase by three corporations of two insolvent corporations engaged in the same business, nor in the conduct of the business thereafter by the three purchasers, especially in an effort to liquidate the indebtedness. *N. W. Consol. Milling Co. v. Callam & Son*, 177 F., 788.
3—762
272. The organization by a number of mercantile jobbers located in the same city of a brokerage company, of which they owned the stock, and the purchase of merchandise required by them from manufacturers and jobbers in other States through such company, instead of through other brokers previously patronized, although there was no agreement binding them to do so, and the use of their influence to extend its business, did not constitute a combination or conspiracy in restraint of interstate trade or commerce, or to monopolize the same, in violation of the Sherman Law, but was a legitimate and lawful business enterprise. *Arkansas Brokerage Co. v. Dunn & Powell*, 173 F., 903.
3—758
273. Combination to Monopolize Refining and Selling Sugar by Buying up all Competitors not a Violation of the Statute.—A combination whose object is to enable a single company to monopolize and control the business of refining and selling sugar by buying up all competing concerns in the United States, is not in violation of the Sherman Law, for it constitutes no restriction upon or monopoly of commerce between the States, but, at most, only makes it possible for the promoters of the combination to restrict or monopolize such commerce, should they so desire. *U. S. v. E. C. Knight Co.*, 60 F., 308.
1—250
274. Same.—The purchase of stock of sugar refineries for the purpose of acquiring control of the business of refining and selling sugar in the United States does not involve monopoly, or restraint of interstate or foreign commerce within the meaning of the Sherman Law. *U. S. v. E. C. Knight Co.*, 60 F., 308.
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- 275. Purchase of Similar Establishments in Other States and Thus Securing a Monopoly Bears no Direct Relation to Interstate or Foreign Commerce.**—Although the *American Sugar Refining Company*, a corporation existing under the laws of the State of New Jersey, obtained through the purchase of stock in four Philadelphia refineries such disposition over those manufactories throughout the United States as gave it a practical monopoly of the business. *Held*, that the acquisition of those refineries by the New Jersey corporation and the business of sugar refining in Pennsylvania, bear no direct relation to commerce between the States or with foreign nations; and that the result of the transaction was the creation of a monopoly in the manufacture of a necessary of life, which could not be suppressed under the Sherman Law. *U. S. v. E. C. Knight Co.*, 156 U. S., 1. 1—379
- 276. Mining Company Owning Stock in Competitor.**—That one Michigan mining corporation engaged in mining and refining copper wholly within that State, by purchases of stock and obtaining proxies from other stockholders, secured voting control of a majority of the stock of another similar corporation operating adjoining mines, and purposed to use such control to place in its directory a majority from its own board of officers, all of which it had the right to do under the laws of the State, did not directly or necessarily affect interstate or foreign commerce, and such control is not of itself illegal as a combination in restraint of such trade or commerce in violation of the Sherman Law, in the absence of evidence of an unlawful intent to so use it as to bring about the prohibited restraint or monopoly, and not in a lawful way in the interest of an economical management of both companies. *Bigelow v. Calumet & Hecla Mining Co.*, 167 F., 727. 3—627
- 277. Same—Percentage of Supply of Commodity.**—Neither "Lake Copper" nor that part classed as Best Lake is so far a distinct commercial commodity as to justify the exclusion of Western or electrolytic copper as a factor in determining whether a combination of two corporations, together producing less than one-half of the lake copper and about one-ninth of the production of the United States, constitutes a monopoly. *Ib.* 3—632
- 278. Securing Control of Competing Corporation by Means of Stock Ownership.**—The securing by one copper-mining corporation, through stock purchases, authorized by the laws of the State and proxies obtained from other stockholders, of control over a competing corporation owning and operating adjacent mines, does not necessarily restrain interstate trade or create a monopoly in violation of the Sherman Law, although it is the intention to place the two corporations to a large extent under a common directorate and general control; and such pur-

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chase will not be held illegal under the statute because of such facts, where its primary purpose is to secure through friendly coöperation and the joint use of facilities a more economical operation of the mines, especially where the controlled corporation is one of a group previously under a common control and management, and whose products were sold through a common agency; nor does the fact that such purchase will result in the transfer of such agency as to its product to that of the purchasing company tend to unlawfully restrain competition. *Bigelow v. Calumet & Hecla Mining Co.*, 167 F., 711. 3—604

- 279. Corporate Rights as Regards Acquisition of Property to an Extent which Gives Control of Traffic Therein Among the States Not Prohibited.**—Congress has no authority, under the commerce clause or any other provision of the Constitution, to limit the right of a corporation created by a State in the acquisition, control, and disposition of property in the several States, and it is immaterial that such property, or the products thereof, may become the subjects of interstate commerce. It is apparent that by the Sherman Law, Congress did not intend to declare that the acquisition by a State corporation of so large a part of any species of property as to enable the owners to control the traffic therein among the several States, constituted a criminal offense. *In re Greene*, 52 F., 104. 1—55
- 280. Contract by which Stockholders of a Corporation Agree Not to Enter Into Competition With Purchaser of the Business of the Company.**—The Sherman Law has no application to a contract by which the stockholders of a corporation engaged in dealing in fish at different places, in consideration of the purchase of the business and good will of the company by another, agreed not to enter into competition with him in such business for the term of 10 years. *A. Booth & Co. v. Davis*, 127 F., 85. 2—318
- 281. Same.**—Such a covenant by the stockholders rests upon a good consideration and is lawful, and the right of the purchaser to enforce it can not be affected by the question whether he has conducted the business lawfully since his purchase. *Ib.* 2—325
- 282. Same—Suit to Enforce—Defenses.**—In a suit to enjoin a defendant from violating such a contract and to enjoin a codefendant from employing his services in a competing business, it is no defense that his co-defendant hired him in ignorance of the contract, and will suffer damage if deprived of his services. *Ib.* 2—326
- 283. Same—Corporation Selling Out Assets and Good Will and Thereby Incidentally or Remotely Affecting Interstate Commerce.**—Where a corporation engaged in the business of buying and

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selling fish sold out its assets and good will to plaintiff's assignor, and the seller no longer retained any interest in the property, so that the sale was not a mere combination of owners and properties under one management, the sale was not in violation of the Sherman Law, though the contract might incidentally or in some remote degree injuriously affect interstate commerce. *Davis v. A. Booth & Co.*, 131 F., 31. 2—566

284. Same.—An agreement ancillary to such sale of a corporation's business, by which the stockholders, who received the purchase price, agree that, in order to protect the good will of the business so sold, they would not either directly or indirectly engage in the same business within certain distinct limits for a period of 10 years, was not void, as an unreasonable restraint of competition in trade, at common law. *Ib.* 2—576

285. Contract for Entire Product.—A contract with an independent manufacturer of wooden ware for the entire product of his plant is not in itself a contract in illegal restraint of trade. *Carter-Crume Co. v. Perrung*, 68 F., 439. 1—845

286. Same.—If an independent manufacturer contracts to sell his entire product, without knowledge of similar contracts made by the buyer with other manufacturers, and without any knowledge of the fact that such contract was intended by the buyer as one step in a general scheme for monopolizing the trade in that article and controlling prices, such independent manufacturer can not be held to have conspired against the freedom of commerce, or to have made a contract in illegal restraint of trade. *Ib.* 1—848

287. Where the subject matter of the agreement does not directly relate to and act upon and embrace interstate commerce, and where the undisputed facts clearly show that the purpose of the agreement was not to regulate, obstruct, or restrain that commerce, but that it was entered into with the object of properly and fairly regulating the transaction of the business in which the parties to the agreement were engaged, such agreement will be upheld as not within the statute, where it can be seen that the character and terms of the agreement are well calculated to attain the purpose for which it was formed, and where the effect of its formation and enforcement upon interstate trade or commerce is in any event but indirect and incidental, and not its purpose or object. *Anderson v. United States*, 171 U. S., 604. 1—967

288. Allowance of Rebates by Combinations of Ship-Owners Constituted only Reasonable Restraint.—Where a combination of foreign ship-owners engaged in South African trade allowed certain rebates to New York shippers who patronized the ships belonging to the combined owners exclusively, such ar-

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rangement constituted only a partial and reasonable restraint on foreign commerce, and was therefore not unlawful at common law. *Thomson v. Union Castle Mail S. S. Co.*, 149 F., 934. 3—111

- 289. Mere Agreement to Monopolize not Prohibited.**—The Sherman Law provides that every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations is illegal; that every person who shall monopolize, or attempt to monopolize, or combine, or conspire with any other person or persons to monopolize any part of the trade or commerce among the several States or with foreign nations shall be guilty of a misdemeanor; and that any person injured in his business or property by anything forbidden by the act may sue therefor. *Held*, That a mere agreement to monopolize the manufacture of an article of commerce is not prohibited, but that, in order to be within the act, the contract, combination, or conspiracy must be in itself in restraint of trade or commerce among the several States or with foreign nations, or, if a monopoly or attempted monopoly or combination or conspiracy to monopolize, it must be of some part of the trade or commerce among the several States or foreign nations. *U. S. Tobacco Co. v. American Tobacco Co.*, 163 F., 708. 3—420

- 290. Citizens Combining in Good Faith to Enforce Ordinance Believed to be Valid, though Invalid, not Unlawful.**—Citizens of a municipality, who in good faith combine to enforce an ordinance thereof, believing on reasonable grounds that it is valid, while in fact invalid as interfering with interstate commerce and so finally adjudged in the litigation instituted by them, are not guilty of violating the Sherman Law, and are not liable for damages sustained by the person prosecuted by them for violating the ordinance. *Citizens' Wholesale Supply Co. v. Snyder*, 201 F., 910. 4—879

- 291. Same—Certain Corporation not Chargeable with Participation in an Unlawful Combination.**—A corporation manufacturing dairy products under patents owned by it is not chargeable with participation in a combination formed contrary to the Sherman Law, by its exclusive sales agent and other manufacturers and dealers, so as to render the corporation and its agent liable under the treble damage clause of section 7 of that act to persons joined as defendants in simultaneous patent infringement suits separately brought by such principal and agent, either because the sales agency contract, which antedated the illegal combination, provided that the manufacturer should protect the agent from all suits for infringement, should defend the validity of the patents, and promptly attack infringers, or because of a supplementary

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contract for the settlement of claims growing out of reciprocal charges of infringement which has no other connection with the unlawful combination than that some of the claims were against corporations which were parties to that unlawful agreement, or because of any negotiations preceding the execution of the sales agency contract which have for their inducement and object the settlement of controversies and rights growing out of earlier contracts, or because of the simultaneous bringing of infringement suits. *Virtue v. Creamery Package Mfg. Co.*, 1b. 57 L. Ed., 393. 4—824, 835

292. **Of Corporations, Selling Machinery Not Competing, Not a Monopoly in Restraint of Trade.**—Combinations of several corporations, each selling or leasing machinery intended for different operations, not competing, but supplementing each other, does not ordinarily constitute a monopoly in restraint of trade. *U. S. v. Winslow*, 195 F., 591. 5—190
293. **Of Wholesale Grocers Mailing Legitimate Arguments to Manufacturers Requesting Abandonment of Certain Policy, not in Violation of the Sherman Law, or of Decree.**—An association of wholesale grocers, by addressing legitimate argument to manufacturers to procure the abandonment by manufacturers of a certain policy and the continuance of another policy, did not violate the Sherman Law, prohibiting contracts, conspiracies, or combinations in restraint of trade, nor a decree enjoining violations of that act, but expressly permitting the association to continue its organization for social or other purposes than those therein prohibited. *U. S. v. Southern Wholesale Grocers' Ass'n*, 207 F., 443. 5—324
294. **Selling Only to Retailers, and Refusing to Sell Jobbers, not a Violation of Sherman Law.**—Where certain tobacco manufacturers had formed a combination in restraint of trade in violation of the Sherman Law, and had appointed the M. company their sole jobbing agent in Greater New York, on condition that it should not sell at more than list prices, receiving a discount on the goods sold, a determination on its part that it would not sell to other jobbers in its territory, but only to retailers, because its former practice of selling to jobbers resulted in insufficient service by its salesmen to retailers, such determination was not illegal, and did not constitute a violation of the act, for which a jobber, whose orders were declined, could recover treble damages under section 7. *Locker v. American Tobacco Co.*, 218 F., 450. 4—621
295. **For Greater Efficiency Not Necessarily a Violation of Sherman Law.**—A combination for greater efficiency does not necessarily violate the Sherman Law. *U. S. v. Winslow*, 227 U. S., 217. 5—212

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- 296. Same—Where the Record Does Not Show Certain Facts, Government Can Not Make Certain Claims.**—Where the share in interstate commerce does not appear in the record, and the machines in question are not alleged to be types of all the machines used in manufacturing the article for which they are made, the Government can not claim that a specified proportion of the business was put into a single hand. *Ib.* 5—212
- 297. Same—Union of Companies Manufacturing Non-Competing Group of Patented Machines, Not a Violation of Sherman Law.**—The union in one corporation of three companies, each manufacturing a different non-competing group of patented machines collectively used for making shoes, is not forbidden by the prohibitions of the Sherman Law against combinations in restraint of interstate trade, although a large percentage of all the shoe machinery business may thus have been put into a single hand. *U. S. v. Winslow*, 57 L. Ed., 481. 5—212
- 298. Union in One Corporation of a Number of Others, Each Manufacturing Non-Competing Machines, Not a Violation of the Sherman Law.**—The union in one corporation of a number of others, each of which had been engaged in the manufacture of patented non-competing machines, but which were used successively in a manufacturing business, is not a combination in restraint of trade, in violation of the Sherman Law. *U. S. v. United Shoe Mach. Co.*, 222 F., 362. 5—704
- 299. Same—The Acquiring, by Fair Means, of Patents, and Business of Other Manufacturers of Different Classes of Machinery, Did Not Evidence an Attempt to Create a Monopoly.**—The United Shoe Machinery Co. was formed by the consolidation of a number of companies, each engaged in making patented machines for use in the manufacture of shoes, for the most part non-competing. During the ensuing 11 years it also acquired the patents, property, and business of a considerable number of other manufacturers of different classes of machinery, all of which was used in the manufacture of shoes, and comprising a group of machines covering practically all of the operations required in such manufacture, by which means the company obtained a very large percentage of the trade in such machinery, although it appeared that neither its property nor its business was acquired by unfair means, but, on the contrary, that in most cases its purchases from others were made at their solicitation, and that in many more cases it refused to buy the business of others which was offered. *Held*, that such facts did not characterize the company as a "combination in restraint of trade," or evidence an attempt to create a monopoly, within the meaning of the Sherman Law. *Ib.* 5—707

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- 300. Same—Illegality of the Company's Business Is Not Shown by the Fact That it Leases, Instead of Sells, Its Machines, etc.**—Neither is illegality of the company's business shown by the fact that, instead of selling its machines, it leases the same for long terms, with a license for the terms of any patents covering parts thereof, for a royalty based on the number of pairs of shoes on which they are used, with a provision requiring the lessee to use the machines to their full capacity so far as its business warrants, nor because of further provisions, in some of the leases of certain machines, requiring the lessee to also lease other related machines from the company under penalty of cancellation of the lease, where such clause was optional with the lessee, who was charged a smaller royalty when it was included. *Ib.* 5—697

2. Agreements not to engage in business.

- 301. Agreements Not to Engage in Business within a Radius of 50 Miles.**—A covenant in a contract by which the owners of brick-making plants conveyed them to a corporation in exchange for its stock binding the sellers not to engage in competing business within a radius of 50 miles from the place of business of the corporation for a term of 10 years, is valid, and may be enforced in a court of equity by a suit to enjoin its violation. *Robinson v. Suburban Brick Co.*, 127 F., 804. 2—312
- 302. Same.**—Such a covenant is personal, and is not brought within the statutes of a State other than that in which the contract was made by the fact that the property sold was situated in such State. *Ib.* 2—317
- 303. A contract for sale of vessels, even if they are engaged in interstate commerce, is not necessarily void because the vendors agree, as is ordinary in case of sale of a business and its good will, to withdraw from business for a specified period.** *Cincinnati, etc., Packet Co. v. Bay*, 200 U. S., 179. 2—868
- 304. Contract by which Stockholders of a Corporation Agree Not to Enter into Competition with a Purchaser of the Business of the Company.**—A covenant by the stockholders of a corporation which sold its property, business, and good will, that, in consideration of such sale and as an inducement thereto, they would not directly or indirectly engage in the same or like kind of business as that carried on by the company in the same territory or in the immediate vicinity of such territory for 10 years after the sale, rests upon a good consideration and is lawful, and the right of the purchaser to enforce it can not be affected by the question whether he has conducted the business lawfully since his purchase. *A. Booth & Co. v. Davis*, 127 F., 875. 2—313

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- 305. Same—Suit to Enforce—Defenses.**—In a suit to enjoin a defendant from violating a contract by which for a valuable consideration he covenanted not to engage in business for himself or another in competition with that of complainant for a term of years, and to enjoin a co-defendant from employing his services in a competing business, it is no defense that his co-defendant hired him in ignorance of the contract, and will suffer damage if deprived of his services. *Ib.* 2—326
- 306. An agreement by which the stockholders of a corporation, on selling its assets to complainant's assignor, agreed not to again engage in a similar business in specified localities for a period of 10 years, or do any act tending to impair the good will of the business sold, was not contrary to public policy.** *Davis v. A. Booth & Co.*, 131 F., 31. 2—566
- 307. Same—Construction.**—Where such contract ancillary to the sale provided that the stockholders of the seller would not again engage in a similar business for a period of 10 years in the territory, or the immediate vicinity of the territory, dealt in by the corporation, or operated in by it or its agents, or the immediate vicinity of such territory, the localities guarded against were restricted to those in which the selling company had establishments for doing business, and the immediate vicinity thereof, and did not include all parts or every one of the United States in which a former customer resided, or into which the corporation's correspondence had extended, or through which an agent of the company had traveled. *Ib.* 2—575
- 308. Assignment of Patent—Agreements to Remain out of Business.**—A contract recited that plaintiff, who was the patentee of an invention relating to brake beams, for the consideration of \$10,000 to be paid him, had assigned to defendant, which was a corporation engaged in the manufacture of brake beams, a certain patent and a pending application for a second, and provided that plaintiff during the life of the patent should not become connected with any company manufacturing or selling brake beams in the United States either as officer, employee, or shareholder, but reserved to him the right to terminate such part of the contract at any time by refunding the consideration paid him by defendant. *Held*, That such agreement to remain out of the brake-beam business did not render the contract unlawful as one in restraint of trade and competition or creating a monopoly and that plaintiff could maintain an action thereon to recover the stipulated consideration. *American Brake-Beam Co. v. Pungs*, 141 F., 923. 2—828

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**3. Manufacturer's right to regulate prices and restrict sale of his own
—products.**

- 309. Contracts Made by Manufacturer with Wholesale Dealers to Sell Proprietary Medicines at a Certain Price Only.**—A system of contract made by the manufacturer of a proprietary medicine between him and wholesale dealers, to whom alone he sold his medicine, by which they were bound to sell only at a certain price and to retail dealers designated by him, and between him and the retail dealers by which, in consideration of being so designated, they agreed to sell to consumers only at a certain price, is not unlawful as in restraint of trade, but is a reasonable provision for the protection of the manufacturer's trade, and he is entitled to an injunction to restrain a defendant from inducing other parties to such contracts to violate the same. *Hartman v. John D. Park & Sons Co.*, 145 F., 358. 2—1000
- 310. Condition in Contracts for Sale of Proprietary Medicines.**—The manufacturer of an article sold as a medicine, and made under a secret process or formula of which he is the sole owner, may lawfully, by contracts with purchasers, impose such conditions as he sees fit with respect to the price at which they shall be sold to others, or the persons to whom they may be sold; and such contracts, like similar contracts with respect to articles made under a patent or copyright, are outside the rule of restraint of trade, whether at common law or under the Sherman Law. *Dr. Miles Medical Co. v. Jaynes Drug Co.*, 149 F., 841. 3—108
- 311. Article Made by Secret Process.**—The exemption from the common-law rule against monopoly and restraint of trade, and the provisions of the Sherman Law which has been extended to contracts affecting the sale and resale, the use or the price of articles made under a patent, or productions covered by a copyright, does not extend also to articles made under a secret process or medicine compounded under a private formula. *Park & Sons Co. v. Hartman*, 153 F., 29. 3—236
- 312. Same—Secret Process or Formula.**—While the owner of a patent or copyright is protected in his own exclusive right by the statute which gives him a monopoly, there is no statute which protects one who makes or vends an article which is made by a secret process or private formula, nor, so long as he keeps his process secret, can he bring himself within the principle of the statute which grants a temporary monopoly in consideration of the full publication of the invention or work. *Id.* 3—236

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- 313. Manufacturers of Proprietary Medicines.**—The manufacturer of a proprietary medicine may sell or withhold from selling as he pleases, fixing the prices, and naming the terms at and upon which alone he will do so, and refusing to sell to those who will not comply, and so far as this is confined to his own goods, and pursued by independent and individual action, it is within his rights; but when two or more combine and agree that neither will sell to anyone who cuts the prices of any of the others, this concerted policy, by which it is sought, not only to maintain by each the price of his own medicine, which alone he is interested in or has the right to control, but also the prices on those of all who are thus banded together, is a direct interference with and restraint upon the freedom of trade, and when it affects interstate commerce is clearly a combination and conspiracy in restraint of such trade, in violation of the Sherman Law. *Jayne v. Loder*, 149 F., 27, 28. 3—74
- 314. Same—Combination of Associations in Drug Trade.**—Three national associations of persons interested in the drug trade—the Proprietors' Association of America, composed of manufacturers of proprietary medicines, the National Wholesale Druggists' Association, and the National Association of Retail Druggists—joined in the adoption of a so-called "tripartite agreement," the purpose of which was to maintain the retail prices of patent or proprietary medicines, and which provided that wholesalers should refrain from selling such medicines at any price to "aggressive cutters" of prices or brokers; an aggressive cutter being defined as a dealer who was so designated by 75 per cent of the local trade at any given place. Pursuant to such concerted plan, to which all were bound and to carry it into effect, proprietors thereafter sold only at fixed and uniform prices to those wholesalers who agreed to maintain prices, and not to sell to aggressive cutters or brokers, in accordance with a list furnished by a committee of the wholesalers' association, while the list of aggressive cutters was furnished by the secretary of the retailers' association. If a wholesaler violated such agreement, and sold to an aggressive cutter, he was at once reported, and his name added to that list, and notice of the fact sent to all retailers who were members, with a suggestion that they act for the protection of their interest. If he was reinstated, a second notice of that fact was sent. *Held*, that such concerted plan and action constituted a combination and conspiracy in restraint of interstate commerce, in violation of the Sherman Law. *Ib.* 3—76
- 315. Agreement for Rebate if Price is Maintained, Where Purchaser Was Not Bound in Any Way.**—An arrangement whereby a distillery company promised persons who purchased from its

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distributing agents that if for the ensuing six months they would purchase their distillery products exclusively from such agents and would not resell the same at prices less than those fixed by the company, then, on being furnished with a certificate of compliance therewith, it would pay a certain rebate on the amount of such purchases, did not constitute a contract in restraint of trade, within the meaning of section 1 of said act, since the purchaser was not in any way bound to the performance of the conditions named; nor did such arrangement operate to "monopolize," or "as an attempt to monopolize," trade and commerce, within the meaning of section 2 of said act. *In re Greene*, 52 F., 104. 1—56

316. Same—No Offense Even After Compliance with the Conditions.—

Nor was there any offense under the statute, even after the purchaser complied with the conditions of the promise, and thereby became entitled to the rebate, for such compliance had no retroactive effect to create a valid contract between the parties prior thereto. *Ib.* 1—72

317. Same.—Even if the promise could be considered as a binding

contract between the parties, the restraint thereby imposed was only partial and reasonable in the protection of defendant's business, and was not of the general character necessary to constitute an unlawful contract in restraint of trade. *Mogul S. S. Co. v. McGregor* [1892], App. Cas., pt. 1, p. 25, approved. *Ib.* 1—75

318. A manufacturer, a corporation, and its employee restricted the sales of its products to those who refrained from dealing in the commodities of its competitors by fixing the prices of its goods to those who did not thus refrain so high that their purchase was unprofitable, while it reduced the prices to those who declined to deal in the wares of its competitors so that the purchase of the goods was profitable to them. The plaintiff applied to purchase, but refused to refrain from handling the goods of the corporation's competitors, and sued it for damages caused by the refusal of the defendants to sell their commodities to him at prices which would make it profitable for him to buy them and sell them again. Held, The restriction of their own trade by the defendants to those purchasers who declined to deal in the goods of their competitors was not violative of the Sherman Law. *Whitwell v. Continental Tobacco Co.*, 125 F., 454. 2—271

319. Sales.—The owner of goods may dictate the prices at which he will sell them, and the damages which are caused to an applicant to buy by the refusal of the owner to sell to him at prices which will enable him to resell them at a profit constitute no legal injury, and are not actionable, because they are not the result of any breach of duty or of contract by the owner. *Ib.* 2—278

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- 320. Contracts Restricting Territory Within Which Purchasers May Sell.**—A contract of sale by a manufacturer to jobbers of some of its product, to be shipped across State lines to the latter, whereby the parties agree that the purchasers shall not sell, ship, or allow any of the product thus purchased to be shipped outside of a certain State, is not in restraint of trade or illegal under the Sherman Law. *Phillips v. Iola Portland Cement Co.*, 125 F., 593. 2—284
- 321. Six Manufacturers of Lasts Making Separate Agreements With a Rubber Company, to Sell Only to It, for a Certain Time, All Lasts Made, Not Liable Under Sherman Law.**—Six of the defendants, all of whom were citizens of and doing business in Massachusetts, were manufacturers of lasts or forms used in making rubber boots and shoes, and were the only makers thereof in the United States. A rubber company acquired control of other corporations engaged in the manufacture and interstate sale of rubber footwear, for the purpose of controlling them and controlling prices of such goods, and with the intent of restricting and controlling the interstate sale and transportation of lasts made separate agreements with each of the last manufacturers whereby they agreed to sell no lasts for a certain period, except to persons and corporations specified by it. By means of these agreements it restricted and controlled the interstate sale of lasts, and deprived other persons engaged in the interstate sale of rubber footwear, including plaintiff, of the ability to procure lasts. *Held*, that, where it did not appear that any of the last manufacturers intended to restrict and control trade, or knew of the contracts between the rubber company and the other last manufacturers, or knew of its purpose or intent to restrain and control trade, and none of such manufacturers occupied any dominating position in the trade in lasts, there was no combination or conspiracy in restraint of the trade, and the last manufacturers were within their rights in making the contracts, and were not liable under the Sherman Law for having done so. *Hood Rubber Co. v. U. S. Rubber Co.*, 220 F., 586. 6—426

4. Live-stock associations and commission merchants.

- 322. A combination of commission merchants at stock yards, by which they refuse to do business with those who are not members of their association, even if it is illegal, is not subject to the act of Congress of July 2, 1890, to protect trade and commerce, since their business is not interstate commerce.** *Hopkins v. U. S.*, 171 U. S., 578. 1—941
- Reversing 82 F., 529 (1—725).

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- 323. Same.**—In order to come within the provisions of the statute, the direct effect of an agreement or combination must be in restraint of trade or commerce among the several States or with foreign nations. *Ib.* 1—955
- 324. Same.**—A by-law of the Kansas City Live-Stock Exchange, which regulates the commissions to be charged by members of that association for selling live stock is not in restraint of interstate commerce or a violation of the Sherman Law. *Ib.* 1—955
- 325. Same.**—A commission agent who sells cattle at their place of destination, which are sent from another State to be sold, is not engaged in interstate commerce; nor is his agreement with others in the same business, as to the commissions to be charged for such sales, void as a contract in restraint of that commerce. *Ib.* 1—957
- 326. Same.**—The business of agents in soliciting consignments of cattle to commission merchants in another State for sale is not interstate commerce; and a by-law of a stock exchange restricting the number of solicitors to three does not restrain that commerce or violate the act of Congress. *Ib.* 1—957
- 327. Live-stock Exchange—Agreement not to do Business with Other Yard Traders who are not Members of the Exchange.**—An agreement among persons engaged in the common business, as yard trader, of buying at a city stock yard cattle which came from different States, that they will form an association for the better conduct of their business, and that they will not transact business with other yard traders who are not members, or buy cattle from those who also sell to yard traders who are not members of the association, is not in violation of the Sherman Law. *Anderson v. U. S.*, 171 U. S., 604. 1—967
- 328. Same.**—A rule of a live-stock exchange that its members shall not recognize any yard trader who is not also a member of the exchange is not in restraint of, or an attempt to monopolize, trade, where the exchange does not itself do any business, and there is nothing to prevent all yard traders from being members of the exchange and no one is hindered from having access to the yards or having all their facilities, except that of selling to members of the exchange. *Ib.* 1—976
- 329. Same.**—Rules to enforce the purpose and object of such exchange, if reasonable and fair, can not, except remotely, affect interstate trade and commerce, and are not void as violations of the Sherman Law. *Ib.* 1—979

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- 330. Same.**—In order to come within the provisions of the statute the direct effect of an agreement or combination must be in restraint of that trade or commerce which is among the several States or with foreign nations. *Ib.* 1—978
- 331. Same.**—Where the subject-matter of the agreement does not directly relate to and act upon and embrace interstate commerce, and where the undisputed facts clearly show that the purpose of the agreement was not to regulate, obstruct, or restrain that commerce, but that it was entered into with the object of properly and fairly regulating the transaction of the business in which the parties to the agreement were engaged, such agreement will be upheld as not within the statute, where it can be seen that the character and terms of the agreement are well calculated to attain the purpose for which it was formed, and where the effect of its formation and enforcement upon interstate trade or commerce is in any event but indirect and incidental, and not its purpose or object. *Ib.* 1—978

5. Stock exchange—Contract for distribution of quotations.

- 332. A contract between a board of trade, having a property right in the quotations made on its exchange, and a telegraph company relating to the transmission and distribution of such quotations by the latter is not in violation of the Sherman Law, as in restraint of trade and commerce, because of a provision that the quotations shall only be furnished to persons who sign an agreement to the effect that they shall not be used in the conduct of a bucket shop. *Board of Trade v. Christie Grain and Stock Co.*, 121 F., 608. 2—333**
- 333. Contracts under which the Chicago Board of Trade furnishes telegraph companies with its quotations, which it could refrain from communicating at all, on condition that they will only be distributed to persons in contractual relations with, and approved by, the board, and not to what are known as bucket shops, are not void and against public policy as being in restraint of trade either at common law or under the Sherman Law. *Board of Trade v. Christie Grain and Stock Co.*, 198 U. S., 236. 2—717**
- 334. Same—Property Right in Quotations—Entitled to Protection.**—In a suit brought by the Chicago Board of Trade to restrain parties from using the quotations obtained and used without authority of the board, defendants contended that as the board of trade permitted, and the quotations related to, transactions for the pretended buying of grain without any intention of actually receiving, delivering, or paying for the same, that the board violated the Illinois bucket-shop statute and there were no property rights in the quotations which

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the court could protect, and that the giving out of the quotations to certain persons makes them free to all. *Held*, That even if such pretended buying and selling is permitted by the board of trade it is entitled to have its collection of quotations protected by the law and to keep the work which it has done to itself, nor does it lose its property rights in the quotations by communicating them to certain persons, even though many, in confidential and contractual relations to itself and strangers to the trust may be restrained from obtaining and using the quotations by including a breach of the trust. *Ib.* 2—730

335. *Same*—Entitled to Protection Though it Concerns Illegal Acts.—A collection of information, otherwise entitled to protection, does not cease to be so because it concerns illegal acts, and statistics of crime are property to the same extent as other statistics, even if collected by a criminal who furnishes some of the data. *Ib.* 2—731

6. *Stockholding corporations—Minnesota.*

336. *Anti-Trust Law of Minnesota Should Receive Same Construction as Sherman Anti-Trust Law.*—The anti-trust law of Minnesota (Laws 1889, p. 487, ch. 359), making unlawful any contract or combination in restraint of trade or commerce within the State, is in substantially the same language as the Sherman Law, and must receive a similar construction. *Minnesota v. Northern Securities Co.*, 123 F., 692. 2—246

Reversed, 194 U. S., 38. Circuit Court had no jurisdiction (2—533).

337. *Same*—Stockholding Corporation.—A holding corporation organized by individual stockholders of two railroad companies owning and operating substantially parallel and competing lines of railroad within the State of Minnesota, for the sole purpose of acquiring, by the exchange of its own stock therefor, stock of the two companies, and holding and voting the same, but having no power or franchise to operate a railroad, is not in violation of the Minnesota anti-trust law (Laws 1889, p. 487, ch. 359), which provides that "any contract, agreement, arrangement, or conspiracy, or any combination in the form of a trust or otherwise * * * which is in restraint of trade or commerce within this State * * * is hereby prohibited and declared to be unlawful," where the purpose of its promoters was thereby to acquire and retain in the same hands a majority of the stock of one or both companies, to insure uniformity of policy and stability of management, although it in fact acquired the controlling interest in both, in the absence of any evidence that it ever exercised its power to prevent competition between

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the two roads, or to interfere in any manner with the fixing of rates by either company. *Ib.* 2—260

7. Patents—Combinations, etc., to keep up the monopolies.

- 338. Holding Company.**—Contracts by which a number of patents covering similar inventions are conveyed by the several owners to one of the parties, which grants licenses under all to the others, are not void as against public policy or as in violation of the Sherman Law, because of provisions intended to protect and keep up the patent monopoly by requiring the licensor to prosecute all infringers, limiting the licenses to be granted to such licensees as shall be agreed on, and imposing conditions on each licensee as to the use and ownership of the patented machines, and prohibiting him from using any others. *U. S. Consolidated Seeded Raisin Co. v. Griffin & Skelley Co.*, 126 F., 364. 2—288
- 339. Conditions imposed by the patentee in a license of the right to manufacture or sell the patented article, which keep up the monopoly or fix prices, do not violate the Sherman Law, to protect trade and commerce against unlawful restraints or monopolies.** *Bement v. National Harrow Co.*, 186 U. S., 70. 2—170
- 340. Reasonable and legal conditions imposed by the patentee in a license of the right to manufacture and sell the patented article, restricting the terms upon which the article manufactured under such license may be used and the price to be demanded therefor, do not constitute such a restraint on commerce as is forbidden by the Sherman Law, to protect trade and commerce against unlawful restraints and monopolies.** *Ib.* 2—189
- 341. The agreement of the licensee of a patent for improvements relating to float spring-tooth harrows not to manufacture or sell any other such harrows than those which it had made under its patents before assigning them to the licensor, or which it was licensed to manufacture and sell under the terms of the license, except such other style and construction as it may be licensed to manufacture and sell by such licensor, is not void as an unlawful restraint on trade or commerce forbidden by the Sherman Law, since the plain purpose of this provision is to prevent the licensee from infringing on the rights of others under other patents, and not to stifle competition or prevent the licensee from attempting to make any improvement in harrows.** *Ib.* 2—191
- 342. An agreement by the licensor of a patent for improvements relating to harrows not to license any other person than the licensee to manufacture or sell any harrow of the peculiar style and construction then used or sold by such licensee does not violate the Sherman Law, to protect trade and commerce against unlawful restraints and monopolies.** *Ib.* 2—191

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- 343.** The very object of these laws is monopoly, and the rule is, with few exceptions, that any conditions which are not in their very nature illegal with regard to this kind of property, imposed by the patentee and agreed to by the licensee for the right to manufacture, or use or sell the article, will be upheld by the courts. The fact that the conditions in the contracts keep up the monopoly or fix prices does not render them illegal. *Ib.* 2—189

See also COMBINATIONS, ETC., 178-185.

8. Railroads—Rates—Contracts, etc., favoring particular roads or individuals.

- 344.** Combinations to Maintain Railroad Rates, but not Preventing or Illegally Limiting Competition, not a Violation of Section 1 of Statute.—An agreement between several competing railway companies and the formation of an association thereunder for the purpose of maintaining just and reasonable rates, preventing unjust discriminations by furnishing adequate and equal facilities for the interchange of traffic between the several lines, without preventing or illegally limiting competition, is not an agreement, combination, or conspiracy in restraint of trade in violation of section 1 of the Sherman Law. *U. S. v. Trans-Missouri Freight Assn.*, 53 F., 410. 1—80

Reversed, 166 U. S., 290 (1—648).

- 345.** Same—Not a Violation of Section 2 as Tending to a Monopolization, etc.—Nor is such an agreement in violation of section 2 of such act tending to the monopolization of trade and commerce. *Ib.* 1—97

- 346.** Same—Separate Organizations, etc.—Where each company, by such agreement, maintains its own organization as before, elects its own officers, delegates no powers to the association to govern in any respect the operations or methods of transacting the routine business of the several competing lines, but simply requires that each company shall charge just and reasonable rates, and provides for certain regulations in regard to changes in such rates, such contract or agreement is not forbidden by public policy as amounting to a transfer of the franchises and corporate powers of such companies. *Ib.* 1—98

- 347.** Same.—A contract between railroad companies forming a freight association that they will establish and maintain such rates, rules and regulations on freight traffic between competitive points as a committee of their choosing shall recommend as reasonable; that these rates, rules, and regulations shall be public; that there shall be monthly meetings of the association, composed of one representative from each railroad company; that each company shall give five days

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notice before some monthly meeting of every reduction of rates or deviation from the rules it proposes to make, that it will advise with the representatives of the other members at the meeting relative to the proposed modification, will submit the question of its proposed action to a vote at that meeting, and, if the proposition is voted down, that it will then give ten days' notice that it will make the modification notwithstanding the vote before it puts the proposed change into effect; that no member will falsely bill any freight, or bill any at a wrong classification; and that any member may withdraw from the association on a notice of 30 days, appears to be a contract tending to make competition fair and open, and to induce steadiness of rates, and is in accord with the policy of the Interstate Commerce act. Such agreement can not be adjudged to be a contract or conspiracy in restraint of trade under the Sherman Law when it is admitted that the rates maintained under the same have been reasonable and that the tendency has been to diminish rather than to enhance rates, and there is no other evidence of its consequences or effect. Shiras, district judge, dissenting. 53 Fed. Rep., 440, affirmed. *U. S. v. Trans-Mo. Ft. Assn.*, 58 F., 58. 1—186

Reversed, 166 U. S., 290 (1—648).

348. Same.—No monopoly of trade or attempt to monopolize trade within the meaning of the Sherman Law is proved by such a contract. *Ib.* 1—217
349. Same.—The railroad companies who are parties to such a contract do not thereby substantially disable themselves from the discharge of their public duties. *Ib.* 1—218
350. A contract by which a railroad company arranges with another, to the exclusion of still others, for the interchange of passengers and freight by through tickets and bills of lading is not a contract in unlawful restraint of trade, within the meaning of the Sherman Law. *Prescott & A. C. R. Co. v. Atchison, T. & S. F. R. Co.*, 73 F., 438. 1—604
351. Contract Between Railroad Company and Individual Giving to Latter Exclusive Control of Shipment of Milk Over its Lines, Including the Fixing of Rates.—Defendant railroad company entered into a contract with plaintiff for a term of years to build up, develop, and conduct the business of the transportation of milk on its lines of road. Plaintiff was to have full charge of such business and was to receive as compensation a percentage of the freights earned therein. It was provided that he should charge rates not in excess of those charged by competitive roads, and should be granted the exclusive privilege of transporting milk over defendant's lines "so far as it was permitted to do so by law." In the execution of the contract all rates were made by defendant, and

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plaintiff was not given a monopoly of the milk traffic. *Held*, That such contract was not ultra vires nor void as contrary to public policy, especially as practically construed by the parties in its execution; nor was it in violation of the Sherman Law. *Delaware, L. & W. R. Co. v. Kuttner*, 147 F., 51.

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- 352. Contracts or combinations between railroad companies which do not directly and necessarily affect transportation, or rates therefor, are not in restraint of trade or commerce, nor within the Minnesota anti-trust law of 1899, which is in substantially the same language as the Sherman Law, even though they may remotely and indirectly appear to have some probable effect in that direction. *Minnesota v. Northern Securities Co.*, 123 F., 692.**

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- 353. Joint Traffic Associations—Proportionate Rates and Division of Traffic.**—A combination of railroad companies into joint traffic associations, under articles of agreement by which each road carries the freight it may get over its own line, at its own rates, and has the earnings to itself, though providing proportional rates of proportional division of traffic, is not a pooling of traffic on freights or division of net proceeds of earnings, within the prohibitions of the Interstate Commerce Law, nor of the Sherman Law, against unlawful restraints and monopolies. *U. S. v. Joint Traffic Assn.*, 76 F., 895.

1—615

Reversed, 171 U. S., 505 (1—869).

- 354. Through Transportation—Prepayment of Freight.**—A common carrier engaged in interstate commerce may at common law and under the Interstate Commerce Law demand prepayment of freight charges, when delivered to it by one connecting carrier, without exacting such prepayment when delivered by another connecting carrier, and may advance freight charges to one connecting carrier without advancing such charges to another connecting carrier. *Gulf, C. & S. F. Ry. Co. v. Miami S. S. Co.*, 86 F., 407.

1—823

- 355. Same—Joint Rates and Billing.**—Such carrier may enter into a contract with one connecting carrier for through transportation, through joint traffic, through billing, and for the division of through rates, without being obligated to enter into a similar contract with another connecting carrier. *Ib.*

1—848

- 356. Same—Remedy not by Injunction, but by Suit for Damages.**—The remedy of a party injured by such an agreement is not by bill of injunction, but by a suit for threefold damages under the Sherman Law, the only party entitled to maintain a bill of injunction under that act being the Government of the United States. *Ib.*

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See also CARRIERS.

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- 357. Purchase by Railroad of Controlling Interest in Stock of Competing Railroad.**—The purchase by one railroad company of a controlling interest in the stock of another, which was a competitor in the carrying of anthracite coal between the mines and New York Harbor, did not constitute a combination in restraint of interstate commerce in such coal, or to monopolize such commerce, unlawful under Sherman Law where the predominating motive in the purchase was to preserve traffic arrangements which were very important to the purchasing company, by preventing the purchase of such stock by another company, although its necessary incidental effect was to eliminate competition between the two roads in the coal carrying business. (Per Lanning, C. J.) *U. S. v. Reading Co.*, 183 F., 487. 3—955
- 358. Same.**—The purchase by one railroad company of the stock of another by issuing and exchanging its own stock therefor, both roads being at the time carriers of anthracite coal from Pennsylvania to New York Harbor, but chiefly from different localities, *held* not to constitute a combination in restraint of interstate commerce in such coal, unlawful under Sherman Law; it appearing that the main object of the consolidation was the betterment of the terminal facilities of both roads at New York City and Harbor, which were largely improved thereby to the benefit of the public, and that their competition in the coal carrying business was slight, and the effect, if any, on such competition merely incidental. (Per Lanning, C. J.) *Ib.* 3—958
- 359. Competing Railroad Lines Uniting Control by the Ownership of Stock in One Railroad by Another.**—In 1901 the Union Pacific Railroad Co. bought stock of the Southern Pacific Co., which gave it practically a controlling interest, and the United States brought suit to enjoin the voting of such stock, on the ground that its acquisition was for the purpose of suppressing competition between the two companies in interstate commerce, and of monopolizing such commerce or a part thereof, in violation of the Sherman Law. At that time the Southern Pacific Co. owned and operated a steamship line between New York and New Orleans, and rail lines from the latter place to the Pacific coast, and by way of San Francisco to Portland, Oreg. It also owned and operated the line of the Central Pacific Railroad Co. between San Francisco and Ogden, Utah, from which point it connected eastward with the line of the Union Pacific and also with another competing line. The main line of the Union Pacific extended from Omaha to Ogden, with a branch from Kansas City westward to a connection with the main line. It also, through subsidiary companies, owned and operated a line from a connection with its main line to Portland, and from there oper-

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ated steamship lines to the Orient and to San Francisco. For through freight for the Pacific coast originating east of its Missouri River terminals it was dependent on other roads, with which it there connected, and practically all of such freight for San Francisco was forwarded from Ogden over the Central Pacific line, 800 miles long, for which the Southern Pacific received about four-tenths of all the freight from Omaha or Kansas City westward. The rail and water line of the Union Pacific from Ogden to San Francisco by way of Portland was 1,700 miles long, its steamer service was irregular, and the amount of freight sent that way was negligible. The two companies were competitors to a small extent for oriental business, for business from the Atlantic seaboard to Portland and vicinity, and also, through branches and connecting lines, to and from other common points; but the total amount of such competitive business done by the Southern Pacific during the year ending in 1901 amounted to only 0.88 per cent of its entire tonnage, and that done by the Union Pacific but 3.10 per cent of its entire tonnage. While the Union Pacific maintained agents in the East to solicit business, it was chiefly from connecting carriers, and it received little more in freights for such business than did the Southern Pacific. *Held*, that the two roads were not substantial competitors for interstate or foreign business, in such sense that the purchase of the stock by the Union Pacific, for the purpose of giving it an assured connection with San Francisco, which it could control, constituted a direct restraint upon such commerce, in violation of the act. *U. S. v. Union Pacific Railroad Co.*, 188 F., 116. 4—323

360. Same—Contract Between Railroad Companies to Build Line to be Jointly Owned.—The Union Pacific Railroad Co., through a subsidiary company, had projected and partly built a line of road between Salt Lake City and Los Angeles, when a controversy arose over a portion of the right of way through the mountains between that company and another, which also desired to build a road between the same points, which was finally settled by an agreement to unite and build a road in which each party should own a half interest, with a further agreement respecting rates on through business. The Union Pacific Co. at that time owned a controlling interest in the Southern Pacific Co., which owned and operated a line through Los Angeles to San Francisco, and one from there to Ogden, near Salt Lake City. *Held*, that the new line, which was direct, and much more serviceable and convenient for the public, was not a natural competitor of the Southern Pacific Co. with respect to business between Los

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- Angeles and Salt Lake City in such sense as to constitute the agreement under which it was built a combination in restraint of interstate commerce, in violation of the Sherman Law, nor was it unlawful thereunder, on the ground that it prevented the building of two lines, instead of one, it appearing that there was but one practicable route through the mountains, over which it was not feasible to construct two lines, nor because of the minor and incidental provisions relating to the exchange of business. *Ib.* 4—325
361. **Same.**—Contracts entered into by a railroad company, not in themselves unlawful as in restraint of interstate commerce, in violation of the Sherman Law, *held* not to evidence a combination or conspiracy to restrain such commerce, in view of evidence showing that they did not have such effect. *Ib.* 4—327
362. **Purchase of Stock in Competing Railway, Insufficient in Amount to Give Control.**—The purchase by an interstate railroad company of stock of another company operating a competing line, where it was insufficient in amount to give control of its competitor, and no attempt was made to exercise such control, does not effect a combination in restraint of interstate commerce, in violation of the Sherman Law. *U. S. v. Union Pacific R. Co.*, 188 F., 117. 4—324
363. **Same.**—When Stock Purchased, Sold Before Suit, no Ground for Granting Injunction.—The purchase by an interstate railroad company of the majority of the stock of another company operating a competing line affords no ground for the granting of an injunction under the Sherman Law where such stock was sold prior to the suit. *Ib.* 4—324
364. **The exaction by a combination of steamship companies of agreements by their agents to sell passage tickets for such companies only, or the division of the business between them in a predetermined portion, held not a violation of the Sherman Law.** *U. S. v. Hamburg-American Line*, 216 F., 974. 4—901
- 9. Combinations, etc., operating wholly within a State.*
365. **A combination or trust between the owners of tugs operating entirely within the confines of a State is not a combination in restraint of trade or commerce among the several States or with foreign nations, so as to come within the condemnation of the statutes of the United States, although most of the owners held coasting licenses.** *The Charles E. Wiswall*, 86 F., 671. 1—850
366. **A contract for the purchase of certain river craft to run between certain points in the same State, where the vessels necessarily pass over the soil of adjoining States, which provides for the maintenance of existing traffic rates, and the**

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- vendors agree to withdraw from competition for five years, is not a contract in restraint of interstate trade under the Sherman Law, and the purchaser is not relieved from his obligation to pay the purchase price. *Cincinnati, etc., Packet Co. v. Bay.*, 200 U. S., 179. 2—867
367. Same.—A contract is not to be assumed to contemplate unlawful results unless a fair construction requires it. *Ib.* 2—872
368. Same.—Even if there is some interference with interstate commerce, a contract is not necessarily void under the Sherman Law if such interference is insignificant and merely incidental and not the dominant purpose; the contract will be construed as a domestic contract and its validity determined by the local law. See *U. S. v. Trans-Mo. Ft. Assn.*, 166, U. S., 290, 329; *U. S. v. Joint Traffic Assn.*, 171 U. S., 505, 568; and *Bement v. National Harrow Co.*, 186 U. S., 70, 92. *Ib.* 2—872
369. Same.—A contract for sale of vessels, even if they are engaged in interstate commerce, is not necessarily void because the vendors agree, as is ordinary in case of sale of a business and its good will, to withdraw from business for a specified period. *Ib.* 2—873
370. The Sherman Law does not apply to a contract or combination relating to the business of manufacturing within a State. *Robinson v. Suburban Brick Co.*, 127 F., 804. 2—312
371. Agreements not to Engage in Business—Contracts in Partial Restraint of Trade.—A covenant in a contract by which the owners of brick making plants conveyed them to a corporation in exchange for its stock, binding the sellers not to engage in competing business within a radius of 50 miles from the place of business of the corporation for a term of 10 years, is valid, and may be enforced in a court of equity by a suit to enjoin its violation. *Ib.* 2—310
372. A combination to restrain competition in proposals for contracts for the sale of certain articles which are to be delivered in the State in which some of the parties to the combination reside and carry on business is not, so far as those members are concerned, in violation of the Sherman Law, although the contract may be awarded to some party outside the State as the lowest bidder. *Addyston Pipe & Steel Co. v. U. S.*, 175 U. S., 211. 1—1009
373. Same—Jurisdiction of Congress.—Although the jurisdiction of Congress over commerce among the States is full and complete, it is not questioned that it has none over that which is wholly within a State, and therefore none over combinations or agreements so far as they relate to a restraint of such trade or commerce; nor does it acquire any jurisdiction over that part of a combination or agreement which relates to commerce wholly within a State by reason of the fact that

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the combination also covers and regulates commerce which is interstate. *Ib.* 1—1041

374. An association of manufacturers of shingles within a particular State, formed for the purpose of securing concerted action between its members to prevent overproduction and establish uniform prices and grading, is not an illegal combination in restraint of interstate or foreign commerce within the meaning of the Sherman Law or subject to Federal control, and the fact that through the action of the association the mills of its members were closed for a certain time, and the price of shingles was raised, but not to an extent alleged to be unreasonable or exorbitant, does not give a dealer in shingles for export a right of action against it or its members under such law. *Gibbs v. McNeeley*, 102 F., 594. 2—25

375. A combination controlling not only the manufacture of an article in the State, but also the sale of the manufactured article, is not one in restraint of interstate commerce, so as to give a right of action against it, under the Sherman Law, to one injured by a resolution passed and circulated by it denouncing him for cutting prices, its sales being within the State, and any transportation and sale of the articles in other States being by other agencies. *Gibbs v. McNeeley*, 107 F., 210. 2—71

Reversed by Circuit Court of Appeals, 118 F. 120 (2—104).

10. Labor combinations.

376. Combination Between Local Labor Union and Labor Organization Covering Many States—Boycott on Goods Sent to Other States.—The action of the members of a labor union in attempting to compel a hat manufacturer to unionize his factory by leaving his employment and preventing others from taking employment therein, and also, with the assistance of the members of affiliated organizations, by declaring a boycott upon his goods in other States into which such goods have been shipped for sale at retail, does not have such relation to interstate commerce as to constitute a combination or conspiracy in restraint of such commerce in violation of the Sherman Law. *Loewe v. Lawlor*, 148 F., 924.

Reversed by Supreme Court, 208 U. S., 274 (3—324).

11. Municipal contracts—State monopolies.

377. Contract Limiting Character of Material to be Used to that Controlled by a Single Corporation.—Where the contract for the paving of a street with asphalt limited the kind of asphalt to be used to Trinidad asphalt, such fact, and the further fact that such asphalt was controlled by a single corporation was not violative of the commerce clause of the

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- Constitution or of the Sherman Law, and did not not affect the validity of the contract. *Field v. Barber Asphalt Pav. Co.*, 117 F., 925. 2—193
378. Same.—The specification in an ordinance by a municipal council that Trinidad Lake asphalt shall be used for street improvement, does not violate the commerce clause of the Federal Constitution or the Sherman Law, notwithstanding this particular kind of asphalt is the product of a foreign country and competitive bidding was thereby rendered impossible. *Field v. Barber Asphalt Paving Co.*, 194 U. S., 618 2—555
379. Same.—The necessity of an improvement of streets is a matter of which the proper municipal authorities are the exclusive judges and their judgment is not to be interfered with except in cases of fraud or gross abuse of power. *Ib.* 2—562
380. State Monopoly of Liquor Traffic.—The Sherman Law is not applicable to the case of a State which, by its laws, assumes an entire monopoly of the traffic in intoxicating liquors (act S. C., Jan. 2, 1895). A State is neither a "person" nor a "corporation," within the meaning of the act of Congress. *Lowenstein v. Evans*, 69 F., 908. 1—598

COMMERCE. See INTERSTATE COMMERCE.

COMMODITY CLAUSE.

1. Transportation by Railroad Company of Coal It Has Sold at Its Mines, Not Unlawful.—A contract between the two companies, by which the coal company agreed to buy f. o. b. at the mines all of the coal mined or purchased by the railroad company which it desired to sell, and to pay for certain grades thereof a stated per cent of the general average f. o. b. prices of such coal at tidewater points, does not leave the railroad company with "any interest, direct or indirect," in the coal, after its delivery to the coal company, which renders its transportation unlawful under the statute, where all shipments are made pursuant to orders of the coal company, and the latter also has full control over the prices at which it sells. *U. S. v. D., L. & W. R. Co.*, 213 F., 260. 6—255
Reversed, 238 U. S., 516 (6—260).
2. Does Not Prohibit Railroad from Carrying Coal from Its Own Mines which It Had Sold to a Coal Company at the Mines.—Under the decisions of the Supreme Court construing the Commodities Clause of the Hepburn Act (34 Stat., 584), and holding that it does not prohibit a railroad company from transporting in interstate commerce commodities manufactured, mined, produced, or owned at the time of shipment by a distinct bona fide corporation, merely because of the company's ownership of stock in such corporation, irrespective of the extent of such stock ownership, a railroad company, owning and holding as lessee at the time of the passage of the act, a large quantity of coal lands and extensive mines and stor-

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age and sales equipment throughout the country, which after such decisions, in good faith, organized a separate coal company to lease its outside equipment and buy the product of its mines at the breakers, in which operation it owns no stock, but sold the greater part to its own stockholders, by whom much of it was afterwards sold to third persons, is not prohibited from carrying the coal from its mines after it has passed into the ownership of the coal company. *Ib.*

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3. Same—To Render Such Transportation Unlawful, Not Sufficient that Small Number of Persons Own Controlling Interest in Both Companies, etc.—It is insufficient to render such transportation unlawful that a comparatively small number of persons own a controlling interest in both the railroad company and the coal company, and that some of the officers and directors of the two are the same, where the business of each is separately conducted, and no discrimination is shown to have been made by the railroad company in favor of the coal company as a shipper. *Ib.*

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4. Legality of Transportation by Railroad of Coal It Has Sold at Its Mines, Considered in Connection with Commodity Clause of Hepburn Act.—A railroad corporation engaged at the time of the passage of the Hepburn Act in the business of mining, buying, transporting and selling coal, in order to divest itself of title after the coal had been mined and before transportation began, caused a coal company to be incorporated having stockholders and officers in common with itself; thereupon the two corporations having a common management entered into a contract prepared by the railroad company under which the railroad company did not go out of the mining and selling business, but when the coal was brought to the surface it lost title by a sale to the coal company *f. o. b.* the mines and instantly as carrier regained possession and retained it until delivery to the coal company which subsequently paid the contract price; the price paid was a fixed percentage of the price and a fixed terminal on the day of delivery at the mines, and the railroad agreed to sell all of the coal it produced or purchased from others to the coal company and the latter company agreed to buy only from the railroad company and subject to the contract; the stockholders of the railroad company were allowed to take *pro rata* the stock of the coal company and practically all availed of the option, and the coal company declared a dividend on each share of stock sufficient to pay for the amount of stock allotted to the holder thereof. In a suit brought by the Government alleging that the two corporations were practically one and that the contract was invalid, *Held*, that:

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5. The Commodity Clause of the Hepburn Act was intended to prevent railroads from occupying the dual and inconsistent position of public carrier and private shipper; and, in order to separate the business of transportation from that of selling, the statute made it unlawful for the carriers to transport in interstate commerce any coal in which the carrier had any interest, direct or indirect. *U. S. v. D., L. & W. R. R. Co.*, 238 U. S., 525. 6—269
6. It is not improper for a carrier engaged in mining coal to institute the organization of a coal company to buy or produce the coal so as to comply with the terms of the Commodities Clause and to give its stockholders an opportunity to subscribe to the stock, but it must dissociate itself from the management of the coal company as soon as the same starts business. *Ib.* 6—271
7. Mere stock ownership by a railroad company or by its stockholders in a producing company is not the test of illegality under the Commodity Clause but unity of management and *bona fides* of the contract between the carrier and the producer. *Ib.* 6—270
8. The Commodity Clause and the Sherman Act are not concerned with the interest of the parties, but with the interest of the public; and if a contract between a carrier and a producer is as a matter of law in restraint of trade, or if the producing company is practically the agent of the carrier, the transportation of the article produced by the carrier is unlawful. *Ib.* 6—277
9. The contract in this case enables the railroad company to practically control the output, sales, and price of coal and to dictate to whom it should be sold and as such is illegal under both the Commodities Clause and the Sherman Law. *Ib.* 6—278
10. In order to comply with the Commodities Clause in regard to the transportation of coal a carrier engaged also in mining coal must absolutely disassociate itself from the coal before the transportation begins, and if it sells at the mouth of the mine, the buyer must be absolutely free to dispose of it and have absolute control, nor should it sell to a corporation managed by the same officers as itself—that is contrary to the policy of the Commodities Clause. *Ib.* 6—278
11. While there might be a bona fide and lawful contract between a carrier mining coal and a buying company by which the latter is to buy all of the coal of the former, the contract to be not illegal must leave the buyer free to extend its business elsewhere as it pleases and to otherwise act in competition with the carrier. *Ib.* 6—279
12. Mere Ownership by Railway Stockholders of Stock of Coal Company Not a Test in Determining Legality of Transportation

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- by Railroad Company of Coal Company's Coal, under Commodity Clause.—The mere ownership by railway stockholders of the stock of a coal company cannot be used as a test by which to determine the legality of the interstate transportation of the coal company's coal by the railway company, under the act of June 29, 1906 (34 Stat., 584), making it unlawful for any railway company to transport in interstate commerce any article which it may own, or in which it may have any interest, direct or indirect. *Ib.* 59 L. Ed., 1438. 6—270
13. Practically Identical Stock Ownership of Railroad Company and Coal Company, Renders Transportation by Railroad Company of Coal It Has Sold at Its Mines to the Coal Company, Unlawful, under Sherman Law and Commodity Clause of Hepburn Law.—A contract between a railway company owning anthracite coal mines and a coal company, with practically identical stock ownership and management, by which the railway company sold the coal at the mouth of the mines to the coal company and instantly regained possession as carrier, retaining possession until delivery at the conclusion of the interstate transportation to the coal company, which subsequently paid therefor at the contract price, viz, 65 per cent of the New York market price on the day of delivery at the mines, violates both the Commodities Clause of the Hepburn Act of June 29, 1906 (34 Stat., 584), making it unlawful for any railway company to transport in interstate commerce any article which it may own or in which it may have any interest, direct or indirect, and the Sherman Law, prohibiting contracts in restraint of interstate trade, where such coal company was created for the express purpose of becoming a party to such contract, under which it was to handle nothing except the railway company's coal, and was dependent solely upon the railway company for the amount it could procure and sell, and was absolutely excluded from the right to purchase elsewhere without the consent of the railway company (which, however, was under no corresponding obligation to supply any definite amount at any definite date), and was to conduct the selling of the coal so as best to conserve the interests, good will, and markets of the coal mined by the railway company, and was to continue to fill the orders of present responsible customers of the railway company, even if some of such sales might be unprofitable. *Ib.* 6—279
14. The Holding by the Reading Co. of Capital Stock of Other Railroad and Coal Companies, and the Carriage by It of the Coal from Its Owned Coal Companies Does Not Render Such Transportation Unlawful under Commodity Clause, Hepburn Law.—The Philadelphia & Reading Coal & Iron Co. was incorporated in 1871 as a subsidiary company by the Philadelphia & Reading Railroad Co. to take over

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and operate coal properties which the railroad company had purchased or desired to purchase. In 1896, when both companies were in the hands of receivers, a reorganization was effected. The property of both companies was sold. Most of the railroad property was conveyed by the purchasers to the Philadelphia & Reading Railway Co., organized for the purpose, while the coal property was reconveyed to the coal and iron company. The capital stock of both these companies was issued to the Reading Co., a holding corporation, which has since continued to own practically all of the same. Since that time, while there has been a common ownership of the two companies and to some extent common directorates, their operating departments and officers have been entirely separate, and the business between them has been conducted at arms' length. The railway company has charged the coal company customary rates for the carriage of its coal, without discrimination, and has purchased and paid for all coal for its own use. *Held*, That the railway company did not mine or produce the coal transported for the coal company, nor did it own or have any interest, direct or indirect, in such coal, which rendered its transportation of the same unlawful, under the commodities clause of the Interstate Commerce Act, as added to the Hepburn Act of June 29, 1906 (34 Stat., 585). *U. S. v. Reading Co.* 226 F., 282. 6—369

COMMON CARRIERS.

1. Discrimination Made by, in Through Route Agreements, May Violate Sherman Law.—An agreement between connecting railway and steamship carriers and a wharfage company to establish a through route and joint rates for transportation between Puget Sound and Yukon River points, to refuse to make such arrangements with other connecting carriers, and to charge high local rates and discriminating wharfage charges—all with the intent and result of eliminating all competition, violates the prohibitions of the Sherman Law against combinations or conspiracies in restraint of interstate or foreign trade or commerce, or the monopolization of, or attempt to monopolize, any part of such trade or commerce. *U. S. v. Pacific & Arctic R. & N. Co.*, 57 L. Ed., 742. 5—230

2. Same—Discriminations Practiced by, Can Not Be Redressed by Courts in Advance of Action by Interstate Commerce Commission.—Discriminations practiced by carriers in the giving or refusing of joint traffic arrangements contrary to the Act to Regulate Commerce can not be redressed by the courts in either a criminal or civil proceeding in advance of action by the Interstate Commerce Commission. *Id.* 5—231

See also CARRIERS.

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COMMON LAW.

1. There is no Federal common law distinct from the common law of the States. *United Copper Sec. Co. v. Amalgamated Copper Co.*, 232 F., 577. 6—448
2. Common-Law Offenses—Definitions.—There are no common-law offenses against the United States, and the offenses cognizable in the Federal courts are only such as the Federal statutes define, provide a punishment for, and confer jurisdiction to try; but when Congress adopts or creates a common-law offense the courts may properly look to the common law for the true meaning and definition thereof, in the absence of a clear definition in the act creating it. *In re Greene*, 52 F., 104. 1—55
3. Common-Law Offense Adopted by Congress—Presumption—Interpretation.—Where Congress adopts or creates a common-law offense, and in doing so uses terms which have acquired a well-understood meaning by judicial interpretation the presumption is that the terms were used in that sense, and courts may properly look to prior decisions interpreting them for the meaning of the terms and the definition of the offense where there is no other definition in the act. *U. S. v. Trans-Mo. Ft. Assn.*, 58 F., 58. 1—186
Case reversed, 166 U. S., 290 (1—648).
4. Common-Law Rule.—The ground on which certain classes of contracts and combinations in restraint of trade were held illegal at common law was that they were against public policy. *Ib.* 1—198
5. Public Policy—How Determined.—The public policy of the Nation must be determined from its Constitution, laws, and judicial decisions. *Ib.* 1—200
6. Railroad Companies—Arrangements for Through Billing.—There is no principle of common law which forbids a single railroad corporation, or two or more of such corporations, from selecting, from two or more other corporations, one which they will employ as the agency by which they will send freight beyond their own lines, on through bills of lading, or as their agent to receive freight, and transmit it on through bills to their own lines, and without breaking bulk; and the right to make such selection is not taken away by the Interstate Commerce Law. *New York & N. Ry. Co. v. New York & N. H. R. Co.*, 50 F., 867, explained. *Prescott & A. C. R. Co. v. Atchison, T. & S. F. R. Co.*, 73 F., 438. 1—604
7. Prepayment of Freight.—A common carrier engaged in interstate commerce may at common law, and under the Interstate Commerce Law, demand prepayment of freight charges, when delivered to it by one connecting carrier, without exacting such prepayment when delivered by another con-

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necting carrier, and may advance freight charges to one connecting carrier without advancing such charges to another connecting carrier. *Gulf, C. & S. F. Ry. Co. v. Miami S. S. Co.*, 86 F., 407. 1—823

8. Same.—The rules of the common law do not require a carrier to receive goods for carriage, either from a consignor or a connecting carrier, without prepayment of its charges if demanded, nor to advance the charges of a connecting carrier from which it receives goods in the course of transportation; nor can it be required to extend such credit or make such advances to one connecting carrier because it does so to another. *Southern Ind. Exp. Co. v. U. S. Exp. Co.*, 88 F., 659. 1—862

9. Contracts in Restraint of Trade—At Common Law.—Contracts that were in unreasonable restraint of trade at common law were not unlawful in the sense of being criminal, or as giving rise to an action for damages to one prejudicially affected thereby, but were simply void, and not enforceable. *U. S. v. Addyston Pipe and Steel Co.*, 85 F., 278. 1—781

10. Same.—No contractual restraint of trade is enforceable at common law unless the covenant embodying it is merely ancillary to some lawful contract (involving some such relations as vendor and vendee, partnership, employer and employee), and necessary to protect the covenantee in the enjoyment of the legitimate fruits of the contract, or to protect him from the dangers of an unjust use of those fruits by the other party. The main purpose of the contract suggests the measure of protection needed, and furnishes a sufficiently uniform standard for determining the reasonableness and validity of the restraints. But where the sole object of both parties in making the contract is merely to restrain competition, and enhance and maintain prices, the contract is void. *Ib.* 1—786

See also *CONTINENTAL WALL PAPER CO. v. LEWIS VOIGHT & SONS CO.*, 148 F., 939 (3—44); 212 U. S., 227 (3—480).

11. The illegality, at common law, of a combination formed by corporations and persons in restraint of trade, does not preclude it from recovering the purchase price of goods sold in the course of business. *Connolly v. Union Sewer Pipe Co.*, 184 U. S., 540. 2—118

12. Note to Trust—Avoidance.—A note made for a balance due on goods bought from a corporation can not be avoided merely because the latter is a trust organized to create and carry out restrictions in trade contrary to the common law. *Union Sewer Pipe Co. v. Connolly*, 99 F., 354. 2—1
Affirmed, 184 U. S., 540 (2—118).

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13. **Third Person No Right of Action for Damages Because of Unlawful Combination.**—At common law a third person had no right of action for damages because of an agreement or combination in restraint of trade. *Paine Lumber Co. v. Neal*, 212 F., 265. 5—441
14. **Same—In Suit to Restrain Enforcement of Agreement, not Sufficient at Common Law to Show Agreement May Be in Restraint of Trade, etc.**—In a suit to restrain the enforcement of an agreement in restraint of trade, it is not sufficient at common law to show that an agreement may create a monopoly, may be in restraint of trade, or may be opposed to public policy, since, agreements of that nature being unenforceable, the law will not aid their enforcement, but they are not illegal in the sense of giving a right of action to third persons for injuries sustained. *Ib.* 5—441

COMPETITION.

1. **Is the striving for something which another is actively seeking and wishes to gain.** *U. S. v. Union Pacific R. R. Co.*, 228 U. S., 87. 4—676
2. **It Includes Making of Rates, Character of Service, and Accommodation Afforded.**—Competition between two transcontinental railway systems such as the Union Pacific and Southern Pacific includes not only making of rates but the character of service rendered and accommodation afforded; and the inducement to maintain points of advantage in these respects is greater when the systems are independent than when the corporation owning one of the systems also dominates and controls the other. *Ib.* 4—676
3. **Consolidation of Competing Railways Abridges Free Competition.**—The Union Pacific and Southern Pacific are competing systems of interstate railways and their consolidation by the control of the latter by the former through a dominating stock interest does, as a matter of fact, abridge free competition, and is an illegal restraint of interstate trade under the Sherman Law. *Ib.* 4—677
4. **In this case held, that while there was a great deal of non-competitive business, a sufficiently large amount of competitive business was affected to clearly bring the combination made within the purview of the Sherman Law.** *Ib.* 4—678
5. **While the Law May Not Compel, It May Remove Barriers which Make it Impracticable.**—While the law may not compel competition, it may remove illegal barriers resulting from illegal agreements, which make competition impracticable. *U. S. v. Reading Co.*, 226 U. S., 369. 4—735
6. **Elimination of, Between Competing Companies, if Illegal, Immaterial How Effected.**—The elimination of competition between competing concerns, if illegal, is equally so, whether effected

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by an agreement or by a consolidation. *U. S. v. International Harvester Co.*, 214 F., 994. 5—648

See also STATUTES, 29, 30, 33, 34, 39.

CONDITIONAL SALE.

1. **Patentee by, May Restrict Use of Patented Article.**—While an absolute and unconditional sale operates to pass the patented article outside of the boundaries of the patent, a patentee may by a conditional sale so restrict the use of his vendee within specific boundaries of time, place, or method as to make prohibited uses outside of those boundaries constitute infringement and not mere breach of collateral contract. *Henry v. A. B. Dick Co.*, 224 U. S., 24. 6—753
2. **When Retaining of Title, and Transferring Qualified Title to Property, Constitutes.**—A contract between the manufacturer of automobiles and one whom it purports to appoint agent for their sale, in limited territory, and only to users residing therein, and only at list retail price fixed by the manufacturer, and by which it agrees with him that in consideration of his paying 85 per cent of such price, and of his promise to sell only in such territory, and only to a user, and only for such stipulated price, it will consign the cars to him, but will retain title till it shall have received the full consideration, if constituting a sale, constitutes a conditional sale, transferring a qualified title, though the 85 per cent is required to be paid before it parts with possession of the cars; title passing only on compliance with the other conditions constituting part of the consideration. *Ford Motor Co. v. Boone et al.*, 244 F., 340. 6—1030
3. **Same—When Stipulation to Retain Title Not Invalid as Between Manufacturer and Agent.**—Stipulation in sales to retailers by the patentee manufacturer of automobiles by which it retains title till the cars have been resold to a user at a stipulated price is not invalid as between them, as against the public policy; the manufacturer not being in exclusive control of an article of commerce for which there is no substantial substitute, but controlling only one of many similar devices which may be purchased on the open market, and the contract, so far as appears, not interfering with the free play of wholesome competition. *Ib.* 6—1031

CONGRESS.

1. **Debates in Congress** are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. *U. S. v. Trans-Mo. Ft. Assn.*, 166 U. S., 290. 1—648
2. **Power to Prohibit Combinations to Establish and Maintain Railroad Rates.**—Congress has the power to prohibit, as in restraint of interstate commerce, a contract or combination between competing railroad companies to establish and main-

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- tain interstate rates and fares for the transportation of freight and passengers on any of the railroads parties to the contract or combination, even though the rates and fares thus established are reasonable. *U. S. v. Joint Traffic Assn.*, 171 U. S., 505. 1—869
3. Same—Combinations by Means of Which Competition is Prevented.—Congress has the power to forbid any agreement or combination among or between competing railroad companies for interstate commerce, by means of which competition was prevented. *Ib.* 1—931
4. The Sherman Law is a legitimate exercise of the power of Congress over interstate commerce, and a valid regulation thereof. *Ib.* 1—935
5. Power to Legislate Upon the Subject of Private Contracts in Respect to Interstate Commerce.—The power of Congress to regulate interstate or foreign commerce includes the power to legislate upon the subject of private contracts in respect to such commerce. *Addyston Pipe & Steel Co., v. United States*, 175 U. S., 211. 1—1009
6. Same.—Congress may enact such legislation as shall declare void and prohibit the performance of any contract between individuals or corporations where the natural and direct effect of such a contract shall be, when carried out, to directly and not as a mere incident to other and innocent purposes, regulate to any substantial extent interstate or foreign commerce. *Ib.* 1—1024
7. Same.—The power of Congress to regulate interstate commerce comprises the right to enact a law forbidding the citizen from entering into those private contracts which directly and substantially, and not merely indirectly, remotely, incidentally, and collaterally, regulate, to a greater or less degree, commerce among the States. *Ib.* 1—1024
8. Same—No Jurisdiction Over Commerce Wholly Within a State.—Although the jurisdiction of Congress over commerce among the States is full and complete, it is not questioned that it has none over that which is wholly within a State, and therefore none over combinations or agreements so far as they relate to a restraint of such trade or commerce; nor does it acquire any jurisdiction over that part of a combination or agreement which relates to commerce wholly within a State, by reason of the fact that the combination also covers and regulates commerce which is interstate. *Ib.* 1—1025
9. Congress did not exceed its power under the commerce clause of the Federal Constitution in enacting the Sherman Law, declaring illegal every combination or conspiracy in restraint of interstate commerce, and forbidding attempts to monopolize such commerce or any part of it, although such statute is construed to embrace a combination of stockholders

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of two competing interstate railway companies to form a stock-holding corporation which should acquire, in exchange for its capital stock, a controlling interest in the capital stock of each of such railway companies. *Northern Securities Co. v. United States*, 193 U. S., 197 (48 L. Ed., 279).

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10. Had Power to Enact Anti-Trust Law.—Under its powers to regulate commerce among the several States and with foreign nations Congress had authority to enact the Sherman Law. *Northern Securities Co. v. United States*, 193 U. S., 197 (Harlan, Brown, McKenna, Day).

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See *United States v. E. C. Knight Co.*, 156 U. S., 1; *United States v. Trans-Missouri Freight Association*, 166 U. S., 290; *United States v. Joint Traffic Association*, 171 U. S., 505; *Hopkins v. United States*, 171 U. S., 578; *Anderson v. United States*, 171 U. S., 604; *Addyston Pipe & Steel Co. v. United States*, 175 U. S., 211; *Montague & Co. v. Lowry*, 193 U. S., 38.

11. The constitutional guarantee of liberty of contract does not prevent Congress from prescribing the rule of free competition for those engaged in interstate and international commerce. *Ib.*

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12. Congress may protect the freedom of interstate commerce by any means that are appropriate and that are lawful and not prohibited by the Constitution. *Ib.*

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13. If in the judgment of Congress the public convenience or the general welfare will be best subserved when the natural laws of competition are left undisturbed by those engaged in interstate commerce, that must be, for all, the end of the matter, if this is to remain a government of laws, and not of men. *Ib.*

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14. When Congress declared contracts, combinations, and conspiracies in restraint of trade or commerce to be illegal, it did nothing more than apply to interstate commerce a rule that had been long applied by the several States when dealing with combinations that were in restraint of their domestic commerce. *Ib.*

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15. The power of Congress over interstate and international commerce is as full and complete as is the power of any State over its domestic commerce, subject, of course, to such restrictions as are imposed by the Constitution upon the exercise of all power. *Ib.*

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16. No State can, by merely creating a corporation, or in any other mode, project its authority into other States, so as to prevent Congress from exerting the power it possesses under the Constitution over interstate and international commerce, or so as to exempt its corporation engaged in interstate commerce from obedience to any rule lawfully established by

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- Congress for such commerce; nor can any State give a corporation created under its laws authority to restrain interstate or international commerce against the will of the nation as lawfully expressed by Congress. Every corporation created by a State is necessarily subject to the supreme law of the land. *Ib.* 2—474
17. Whilst every instrumentality of domestic commerce is subject to State control, every instrumentality of interstate commerce may be reached and controlled by national authority, so far as to compel it to respect the rules for such commerce lawfully established by Congress. *Ib.* 2—478
18. Congress has the power to establish rules by which interstate and international commerce shall be governed, and by the Sherman Law has prescribed the rule of free competition among those engaged in such commerce. *Ib.* 2—480
19. Congress may Prohibit Private Contracts which Restrain Interstate Commerce.—Congress may, in the exercise of the power conferred by the commerce clause of the Constitution, prohibit private contracts which operate to directly and substantially restrain interstate commerce. *U. S. v. Northern Securities Co.*, 120 F., 721. 2—216
20. It is the declared policy of Congress, which accords with the principles of the common law, to promote individual competition in relation to interstate commerce, and to prevent combinations which restrain such competition between their members; and it is no defense to an action to dissolve such a combination as illegal under the Sherman Law that it has not in fact been productive of injury to the public, or even that it has been beneficial, by enabling the combination to compete for business in a wider field. *U. S. v. Chesapeake & O. Fuel Co.*, 105 F., 93. 2—34
- Affirmed, 115 F., 610 (2—151).
21. Authority over State Corporation.—Congress has no authority, under the commerce clause or any other provision of the Constitution, to limit the right of a corporation created by a State in the acquisition, control, and disposition of property in the several States, and it is immaterial that such property, or the products thereof, may become the subject of interstate commerce; and it is apparent that by the Sherman Law, in relation to monopolies, Congress did not intend to declare that the acquisition by a State corporation of so large a part of any species of property as to enable the owners to control the traffic therein among the several States constituted a criminal offense. *In re Greene*, 52 F., 104. 1—55
22. While Congress may not have general visitatorial power over State corporations, its powers in vindication of its own laws are the same as if the corporation had been created by an act of Congress. *Hale v. Henkel*, 201 U. S., 75. 2—906

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23. Franchises of a corporation chartered by a State are, so far as they involve questions of interstate commerce, exercised in subordination to the power of Congress to regulate such commerce. *Ib.* 2—908
24. Congress has power, under the commercial clause of the Constitution, to regulate and restrict the use, in commerce among the several States and with foreign nations, of contracts, of the method of holding title to property, and of every other instrumentality employed in that commerce, so far as it may be necessary to do so in order to prevent the restraint thereof denounced by the Sherman Law. *U. S. v. Standard Oil Co.*, 173 F., 187. 3—711
25. Is Without Power to Compel a Person to Sell His Goods to a Particular Customer.—Congress is without constitutional power to authorize the courts by injunction to compel a person, selling goods in interstate commerce, and affected by no public duty, to sell his goods to a particular customer. *Great Atl. & Pac. Tea Co. v. Cream of Wheat Co.*, 224 F., 574. 5—872

See also INJUNCTIONS, 26.

CONSENT OF PARTIES. See COURTS, 62, 69.

CONSPIRACY.

1. Conspiracy Defined.—A conspiracy consists in an agreement to do something; but in the sense of the law, and therefore in the sense of the Sherman Law, it must be an agreement between two or more to do, by concerted action, something criminal or unlawful, or, it may be, to do something lawful by criminal or unlawful means. A conspiracy, therefore, is in itself unlawful, and, in so far as this statute is directed against conspiracies in restraint of trade among the several States, it is not necessary to look for the illegality of the offense in the kind of restraint proposed. Any proposed restraint of trade, though it be in itself innocent, if it is to be accomplished by conspiracy, is unlawful. *U. S. v. Debs*, 64 F., 724, 748. 1—352
2. Conspiracy Defined.—A conspiracy is a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal, by criminal or unlawful means. *Pettibone v. U. S.*, 148 U. S., 203, cited. *U. S. v. Cassidy*, 67 F., 698. 1—449
3. Conspiracy Defined.—A conspiracy is a combination between two or more persons to do a criminal or unlawful act, or a lawful act by criminal or unlawful means. There need not be a formal agreement between the conspirators, if it appears they acted in concert and with the design to consummate an unlawful purpose; nor is it necessary that each

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conspirator shall know of all the means to carry out the purpose of the conspiracy. *Lawlor v. Loewe*, 209 F., 725. 5—405

4. **Conspiracy Defined.**—A conspiracy is a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal or unlawful, by criminal or unlawful means. *Mitchell v. Hitchman Coal & Coke Co.*, 214 F., 708. 5—623
5. **Conspiracy Defined.**—A conspiracy is a partnership in criminal purposes brought about by an agreement, and so long as the partnership continues the conspiracy continues, whether anything is done in furtherance of it or not. *Patterson v. U. S.*, 222 F., 631. 5—108
6. **Conspiracy Defined.**—A conspiracy is a combination of two or more persons by concerted action to do an unlawful thing, or to do a lawful thing in an unlawful manner. *Alaska S. S. Co. v. Inter. Longshoremen's Ass'n*, 236 F., 969. 6—680
7. **When a Combination May Constitute.**—A combination to effect an unlawful object through lawful means may constitute a criminal conspiracy. *U. S. v. Rintelen*, 233 F., 799. 6—532
8. **The term "conspiracy,"** in section 1 of the Sherman Law, is used in its well-settled legal meaning, and any restraint of trade or commerce, if to be accomplished by conspiracy, is unlawful. *U. S. v. Debs*, 64 F., 724. 1—322
9. **The word "conspiracy,"** as used in the Sherman Law, has substantially the same meaning as the word "contract." *U. S. v. Kissel*, 173 F., 825. 3—749
10. **Conspiracy More Than a Contract.**—A conspiracy in restraint of trade is more than a contract in restraint of trade; the latter is instantaneous, but the former is a partnership in criminal purposes and as such may have continuance in time; and so held in regard to a conspiracy made criminal by the Sherman Law. *U. S. v. Kissel*, 218 U. S., 608. 3—823
11. **Conspiracy, When Completed.**—The common-law offense of conspiracy is completed when the unlawful conspiracy is entered into, and proof of overt acts is unnecessary. *U. S. v. Rintelen*, 233 F., 797. 6—530
12. **Persons Who Conspire to Restrain Trade Are Guilty, Though No Overt Acts Are Committed.**—Under section 1 of the Sherman Law, persons who conspired to restrain trade between the United States and foreign nations, are guilty, though no overt acts were committed; such conspiracy being governed by the rules applicable to common-law conspiracy, which made the unlawful conspiring the gist of the offense. *Id.* 6—526
13. **Is Complete Under the Sherman Law, When Entered Into, Though Overt Act Not Committed.**—A violation of the Sherman Law is complete where a conspiracy to do acts in re-

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straint of trade is entered into, though no overt act is committed. *U. S. v. Bopp*, 237 F., 285. 6—708

14. Same—Under Section 37, Criminal Code, Is Not Completed Until an Overt Act Is Committed.—The offense denounced by section 37 of the Criminal Code declaring that if two or more persons conspire to commit any offense against the United States or to defraud the United States, and one or more of such parties do any act to effect the object of the conspiracy, each shall be punished, is not completed until an overt act is committed. *Ib.* 6—708

15. Conspiracy to Commit Offenses Against the United States—Revised Statutes, Section 5440.—The statute relating to conspiracies to commit offenses against the United States (Rev. Stat., sec. 5440) contains three elements, which are necessary to constitute the offense. These are: (1) The act of two or more persons conspiring together; (2) to commit any offense against the United States; (3) the overt act, or the element of one or more of such parties doing any act to effect the object of the conspiracy. *U. S. v. Cassidy*, 67 F., 702. 1—455

16. At Common Law, Overt Act Not Necessary.—While at common law it was not necessary to aver or prove an overt act in furtherance of a conspiracy, yet, under the statute relating to conspiracies to commit an offense against the United States, the doing of some act in pursuance of the conspiracy is made an ingredient of the crime, and must be established as a necessary element thereof, although the act may not be in itself criminal. *U. S. v. Thompson*, 31 F., 331, 12 Sawy., 155, cited. *Ib.* 1—450

17. Same.—It is not necessary, however, to a verdict of guilty that the jury should find that each and every one of the overt acts charged in the indictment was in fact committed; but it is sufficient to show that one or more of these acts was committed, and that it was done in furtherance of the conspiracy. *Ib.* 1—464

18. Under Sherman Law, Overt Act Not Necessary.—To constitute the offense of conspiracy in restraint of interstate or foreign commerce, or to monopolize such commerce, under the Sherman Law, unlike a conspiracy to commit an offense against or to defraud the United States, under Rev. St. § 5440, no overt act is necessary; the conspiracy itself being the offense. *U. S. v. Kissel*, 173 F., 825. 3—747

19. Conspiracy as Distinct Offense.—The law regards the act of unlawful combination and confederacy as dangerous to the peace of society, and declares that such combination and confederacy to commit crime requires an additional restraint to those provided for the commission of the crime itself. It therefore makes criminal the conspiracy itself, with pen-

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- alties and punishments distinct from those it attaches to the crime which may be the object of the conspiracy. *U. S. v. Cassidy*, 87 F., 698. 1—449
20. **Same—Manner of Conspiring.**—The common design is the essence of the charge; but it is not necessary that two or more persons should meet together and enter into an explicit or formal agreement for an unlawful scheme, or that they should directly, by words or in writing, state what the unlawful scheme was to be, and the details of the plan or the means by which the unlawful combination was to be made effective. It is sufficient if two or more persons, in any manner or through any contrivance, positively or tacitly, come to a mutual understanding to accomplish a common and unlawful design. *Ib.* 1—455
21. **Formal Agreement Not Necessary.**—No formal agreement is necessary to a conspiracy, a tacit understanding being sufficient; and it is not essential that each conspirator have knowledge of the details, the means to be used, or that the agreement be enforceable. *Alaska S. S. Co. v. Inter. Longshoremen's Ass'n*, 236 F., 969. 6—680
22. **Under the Law of New York, the Gist of the Offense Is an Agreement to Prevent Competition, Regardless of the Intention of the Parties.**—Penal Law of New York, article 54, section 580, subdivision 6, provides that, if two or more persons conspire to commit any act injurious to trade or commerce, each of them is guilty of a misdemeanor. *Held*, that the gist of the offense is an agreement to prevent competition regardless of the intention of the parties; the prevention of competition in business being an "act injurious to trade," within the statute. *Paine Lumber Co. v. Neal*, 212 F., 266. 5—443
23. **Character and Effect of, How to Be Judged.**—The character and effect of a conspiracy is not to be judged by dismembering it and viewing its separate parts, but only by looking at it as a whole. *U. S. v. Patten*, 226 U. S., 544. 4—759
24. **Continuance of Conspiracy.**—A conspiracy to restrain or monopolize trade, in violation of the Sherman Law, by obtaining control of a competitor through a pledge of a majority of its stock to secure a loan to a stockholder, and then voting to suspend business until further order of the board of directors, continues, so far as the statute of limitations is concerned, so long as any further action is taken in furtherance of the conspiracy. *U. S. v. Kissel*, 54 L. ed., 1168. 3—823
25. **Same.**—Although mere continuance of result of a crime does not continue the crime itself, if such continuance of result depends upon continuous coöperation of the conspirators, the conspiracy continues until the time of its abandonment or success. *U. S. v. Kissel*, 218 U. S., 607. 3—823

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- 26. When Proven, Is Presumed to Have Continued Until Object Accomplished.**—A conspiracy proved to have been formed is presumed to have continued until its object was accomplished. *Steers v. U. S.*, 192 F., 8. 4—437
- 27. Continues So Long as Partnership in Criminal Purpose Continues.**—Where a conspiracy was in existence more than three years prior to the finding of an indictment, and continued into such period of limitation, it is not absolutely essential to support a conviction therefor that anything should be done in furtherance of the conspiracy within the three years, since a conspiracy is not merely an agreement to do an unlawful thing, or a lawful thing by unlawful means, but is initiated by the agreement, and it continues so long as the partnership continues, whether anything is done in furtherance of it or not. *Patterson v. U. S.*, 222 F., 630. 5—108
- 28. Same—Parties to Conspiracy.**—Where an unlawful end is sought to be effected, and two or more persons, actuated by the common purpose of accomplishing that end, work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy, although the part any one was to take therein was a subordinate one, or was to be executed at a remote distance from the other conspirators. *U. S. v. Cassidy*, 87 F., 702. 1—455
- 29. Same.**—Anyone who, after a conspiracy is formed, and who knows of its existence, joins therein, becomes as much a party thereto from that time as if he had originally conspired. *U. S. v. Babcock*, Fed. Cas. No. 14487, 3 Dill., cited. *Ib.* 1—455
- 30. Must Be at Least Two Parties.**—Where an indictment against a number of defendants charges them with a conspiracy among themselves and with others in restraint of interstate trade and commerce, in violation of section 1 of the Sherman Law, or to monopolize any part of such trade and commerce, in violation of section 2, to warrant a conviction, it must be found that at least two of the defendants were parties to such a conspiracy. *U. S. v. American Naval Stores Co.*, 172 F., 460. 3—687
- 31. One Joining After Conspiracy Formed, as Much a Co-conspirator as if Party to Designing It.**—One who learns of a conspiracy or unlawful combination after it is formed, and then joins it or knowingly aids in the execution of the scheme and shares in its profits, becomes from that time as much a co-conspirator as if he were one of those who originally designed it. *U. S. v. L. S. & M. S. Ry. Co. et al.*, 203 F., 307. 5—259
- 32. Officers of the Manufacturing Department of a Corporation, and Having Nothing to Do with Competition, not Parties to Conspiracy.**—Those officers and agents of a company manufacturing and selling cash registers having nothing to do with competition, as, for instance, those in the manufacturing de-

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- partment, could not be said to be parties to a conspiracy on the part of its officers and agents to restrain and destroy the interstate trade of its competitors. *Patterson v. U. S.*, 222 F., 631. 5—109
33. Same—Persons Knowing of, Not Parties to, Unless by Word or Deed, They Become Parties to It.—It was not sufficient to make persons parties to a conspiracy that they knew of it, or acquiesced in it, if they did not by word or deed become a party to it. *Ib.* 5—109
34. Evidence—Acts of One Party.—Where several persons are proved to have combined together for the same illegal purpose, any act done by one of them, in pursuance of the original concerted plan, and with reference to the common object, is, in the contemplation of the law, the act of the whole party, and therefore the proof of such act will be evidence against any of the others who were engaged in the conspiracy. *U. S. v. Cassidy*, 67 F., 698. 1—449
35. Same—Declarations by Parties.—Any declaration made by one of the parties during the pendency of the illegal enterprise, is not only evidence against himself, but against all the other conspirators, who, when the combination is proved, are as much responsible for such declarations, and the acts to which they relate, as if made and committed by themselves. This rule applies to the declaration of a co-conspirator, although he may not himself be under prosecution. *Ib.* 1—456
36. Acts of Agents Acts of Principal.—The acts of agents and employees in furtherance of a conspiracy are the acts of the principal. *Alaska S. S. Co. v. Inter. Longshoremen's Ass'n*, 238 F., 969. 6—680
37. Are Seldom Capable of Proof by Direct Testimony.—Conspiracies are seldom capable of proof by direct testimony and a conspiracy to accomplish that which is their natural consequence may be inferred from the things actually done. *Eastern States Ret. Lum. Deal. Ass'n v. U. S.*, 234 U. S., 612. 4—873
38. Same—Means Contemplated—Allegations and Proofs.—It is not incumbent upon the prosecution to prove that all the means set out in the indictment were in fact agreed upon to carry out the conspiracy, or that any of them were actually used or put in operation. It is sufficient if it be shown that one or more of the means described in the indictment were to be used to execute that purpose. *U. S. v. Cassidy*, 67 F., 708. 1—464
39. Prosecution for Conspiracy—Sufficiency of Evidence.—Evidence considered in a prosecution for conspiracy in restraint of interstate trade and commerce in violation of the Sherman Law and held sufficient to require the submission of the case to the jury. *Steers v. U. S.*, 192 F., 1. 4—439

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40. **Acquittal not a Bar to Prosecution for Future Acts Continuing the Conspiracy.**—A conspiracy to restrain or monopolize interstate commerce, in violation of the Sherman Law, is necessarily a continuing one, and its illegality is not alone in the act of confederating or engaging in the conspiracy, but also in its continuation, so that a judgment of conviction or acquittal in a prosecution of those engaged in it is not a bar to their subsequent prosecution for continuing and carrying forward the same conspiracy thereafter, which is a new violation of the law. *U. S. v. Swift*, 186 F., 1015. 4—71
41. **If Its Purpose is to Restrain, Degree of Restraint is Immaterial.**—If the purpose of a conspiracy is to restrain interstate trade, within the meaning of the Sherman Law, the degree of restraint effected thereby is immaterial to the offense. *U. S. v. Patterson et al.*, 201 F., 722. 5—37
42. **Not Essential That Its Execution Will Benefit the Conspirators.**—To bring a conspiracy within the Sherman Law, it is not essential that its execution be of any benefit to the conspirators, it being sufficient that it will be in restraint of another's interstate trade or commerce. *Patterson v. U. S.*, 222 F., 619. 5—91
43. **Same—Extent of Trade Conspired Against Is Immaterial.**—Under the Sherman Law, section 1, relative to conspiracies in restraint of interstate commerce, the extent of the interstate trade or commerce conspired against is immaterial, and a conspiracy between the officers and agents of one competitor on its behalf to restrain a single interstate sale or shipment by another competitor is covered by it. *Ib.* 5—91
44. **Good Motives of Conspirators No Defense.**—Under the Sherman Law, which denounces unreasonable competition and conspiracies, a "conspiracy" may have as an element the seeking of an unlawful end or the employment of unlawful means, and the good motives of the conspirators are no defense. *U. S. v. Motion Picture Patents Co.*, 225 F., 806. 6—213
45. **Responsibility Not Lessened Because Unlawful Means Employed Not Effective.**—The responsibility of those who unlawfully place substantial obstacles in the legitimate channels of interstate commerce is not lessened by the fact that some of the persons engaged in such commerce are able by superior agility to surmount the obstacles and that others by strength are able to break them down. *U. S. v. Hollis* (not reported). 6—995
46. **Persons Engaging in One Which Directly Impedes Commerce, Presumed to Have Intended That Result.**—Persons engaging in a conspiracy which necessarily and directly will impede and burden interstate commerce, contrary to section 1 of the Sherman Law, making it a criminal offense to engage

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- in a conspiracy in restraint of interstate commerce, are chargeable with intending that result. *U. S. v. Patten*, 57 L. Ed., 333. 4—759
47. **Not All Conspirators Need Be Traders in Order to Bring It Within the Sherman Act.**—The alleged conspirators need not all be traders in order to bring their conspiracy within the condemnation of the Sherman Law, of combinations in restraint of interstate or foreign commerce, or the monopolization or attempt to monopolize any part thereof. *Nash v. U. S.*, 229 U. S., 373; 57 L. Ed., 1232. 5—240
48. **Conspiracy is Within Provisions of Sherman Law, Though for a Time It May Tend to Stimulate Competition.**—A conspiracy to corner the market in a commodity, though it may tend to stimulate competition for a time, is within the provisions of the Sherman Law, making it a criminal offense to engage in a conspiracy in restraint of interstate commerce, if it also operates to thwart the usual operation of the laws of supply and demand, to withdraw the commodity from the normal current of trade, to enhance the price artificially, to hamper users and consumers in satisfying their needs, and to produce practically the same evils as does the suppression of competition. *U. S. v. Patten*, 57 L. Ed., 333. 4—757
49. **A combination of labor organizations whose professed object is to arrest the operation of the railroads whose lines extend from a great city into adjoining States until such roads accede to certain demands, made upon them, whether such demands are in themselves reasonable or unreasonable, just or unjust, is an unlawful conspiracy in restraint of trade and commerce among the States, within the Sherman Law, and acts threatened in pursuance thereof may be restrained by injunction, under section 4 of the law.** *U. S. v. Elliott*, 62 F., 801. 1—262
50. **A combination to incite the employees of all the railways in the country to suddenly quit their service, without any dissatisfaction with the terms of their employment, thus paralyzing utterly all railway traffic, in order to starve the railroad companies and the public into compelling an owner of cars used in operating the roads to pay his employees more wages, they having no lawful right so to compel him, is an unlawful conspiracy by reason of its purpose, whether such purpose is effected by means usually lawful or otherwise.** *Thomas v. Cin., N. O. & T. P. Ry. Co.*, 62 F., 871. 1—286
51. **Same.**—Such combination, its purpose being to paralyze the interstate commerce of the country, is an unlawful conspiracy, within the Sherman Law, declaring illegal every contract, combination, or conspiracy in restraint of trade

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- or commerce among the several States. *U. S. v. Patterson*, 55 F., 605, disapproved. *Ib.* 1—286
52. Same—Obstructing Mails.—Such combination, where the members intend to stop all mail trains as well as other trains, and do delay many, in violation of Revised Statutes, section 3995, punishing anyone willfully and knowingly obstructing or retarding the passage of the mails, is an unlawful conspiracy, although the obstruction is effected by merely quitting employment. *Ib.* 1—291
53. Any combination or conspiracy on the part of any class of men who by violence and intimidation prevent the passage of railroad trains engaged in interstate commerce is in violation of the Sherman Law, declaring illegal every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the States. *In re Grand Jury*, 62 F., 840. 1—301
54. A combination of persons, without regard to their occupation, which will have the effect to defeat the provisions of the interstate commerce law, inhibiting discriminations in the transportation of freight and passengers, and further to restrain the trade or commerce of the country, will be obnoxious to the penalties prescribed in section 5440, Revised Statutes, relating to conspiracy. *Waterhouse v. Comer*, 55 F., 149. 1—120
55. Not Unlawful for Members of Labor Union, by Peaceable Means, to Induce Persons to Join the Union.—Since members of a trade-union have a lawful right to induce persons employed in the same general business to join the union in order to secure as high wages as possible, compatible with the successful operation of the business, a combination to accomplish such purposes by peaceable and lawful methods, so long as they refrain from resorting to unlawful measures to effectuate the same, does not constitute a conspiracy. *Mitchell v. Hitchman Coal & Coke Co.*, 214 F., 708. 5—622
56. Same—Threats of Labor Organizer, Having No Authority to Carry Them Into Execution, Insufficient to Show a Conspiracy to Compel Unionization of Mines.—Threats of an organizer employed to induce mine workers to form a local of the United Mine Workers of America, to unionize the employees of complainant's mine or shut it down, he having no authority to carry the threats into execution, were insufficient to show a conspiracy to compel the unionization of the mine by unlawful means. *Ib.* 5—623
57. The Exercise, by Employees, of Right to Strike, Not Unlawful.—The exercise by employees of their right to combine and strike to obtain better wages, though it interferes with the employer's business, is not an unlawful conspiracy, which entitles the employer to an injunction restraining acts in fur-

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therance thereof which are in themselves lawful. *Tri-City Trades Council v. American Steel Foundries*, 238 F., 732.

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58. Only Those Which Are Unreasonably in Restraint of Trade and Commerce Are Covered by the Sherman Law.—The Sherman Law declaring illegal every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations covers only contracts, combinations, and conspiracies which are unreasonably in restraint of interstate trade or commerce, though possibly every conspiracy is unreasonably in restraint thereof, on the theory that there can be no reasonable conspiracy, or conspiracy to do a reasonable thing. *Patterson v. U. S.*, 222 F., 618.

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59. Between Competitors, or Between Officers of One Competitor Against Another Are Covered by the Sherman Law.—The Sherman Law includes conspiracies between competitors, or between the officers and agents of one competitor, on its behalf, against another competitor, and also includes conspiracies between any persons against any other person. *Ib.*

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60. Conspiracy to Injure in Business.—The action of an association of manufacturers in adopting a resolution denouncing a dealer in the product they manufactured, who bought and shipped such product to customers in other States and foreign countries, and in printing such resolution in circulars, and mailing the same to other manufacturers and customers of the dealer, whereby his business was injured, constituted an illegal combination or conspiracy in restraint of interstate and foreign commerce, and gives the person injured a right of action in a circuit court of the United States, under the Sherman Law, to recover the damages sustained. *Gibbs v. McNeely*, 102 F., 594.

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See also STATUTES, 102.

61. Same—To Run a Corner in Cotton, Within Terms of Sherman Law.—A conspiracy to run a corner in the available supply of a staple commodity, such as cotton, nominally a subject of interstate trade and commerce, to be accomplished by purchase for future delivery, coupled with a withholding from sale for a limited time, thereby enhancing artificially its price to all buyers throughout the country, is within the terms of the Sherman Law, which makes it a criminal offense to engage in a conspiracy in restraint of interstate commerce, since by its necessary operation it will directly and materially impede and burden such commerce. *U. S. v. Patten*, 57 L. Ed., 333.

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62. Powder Trust—The Mere Fact that a Majority of Stock of One Company is Owned by Another Did Not Alone Show Con-

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spiracy.—The mere fact that the majority of the stock of corporations engaged in the manufacture and sale of powder, other than black blasting powder, was owned or controlled by a corporation engaged in manufacturing black blasting powder, did not alone show that the former corporations participated in a conspiracy by the latter to injure the trade and business of another manufacturing black blasting powder, suing all the corporations for damages under section 7 of the Sherman Law. *Buckeye Powder Co. v. Du Pont Powder Co.*, 223 F., 885. 4—604

63. **Attempt of Conspirators to Coerce Non-members from Dealing with Blacklisted Persons, Illegal Conspiracy.**—Interstate shippers of an especially desirable variety of potato formed a shippers' association, the members of which made 75 per cent of all interstate shipments of such potatoes. The association acted through a committee which was authorized to determine whether any person producing, receiving, or dealing in such potatoes was undesirable. Persons adjudged undesirable were put on a blacklist, which was circulated among the members, who were forbidden under a penalty from having any business dealings with blacklisted persons. The blacklist was also circulated among non-members, dealing in potatoes as buyers, sellers, commission merchants, or otherwise, and such non-members were notified that, unless they ceased dealing with blacklisted persons they would be blacklisted, and members of the association would no longer deal with them. An indictment for conspiracy in restraint of trade did not state the object of the association or the reasons for which persons were blacklisted. *Held*, that on demurrer it must be assumed that these reasons were legitimate, and hence the indictment did not show that defendants were not within their rights in forming the association, blacklisting persons, and agreeing that the members would not deal with such blacklisted persons, but that in going outside its own membership and attempting to coerce non-members from dealing with those blacklisted it was an illegal conspiracy. *U. S. v. King*, 229 F., 278. 6—419

CONSTITUTION.

1. **Constitutional Guaranty of Right of Assembly and Free Speech.**—Inciting the employees of a receiver, who is operating a railroad under the order of a court, to leave his employ, in order to carry out an unlawful conspiracy, is not protected by constitutional guaranties of the right of assembly and free speech, and is not less a contempt because effected by words only, if the obstruction to the operation of the road by the receiver is unlawful and malicious. *Thomas v. Cin., N. O. & T. P. Ry. Co.*, 62 F., 803. 1—266

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2. The constitutional freedom of contract as to the use and management of property does not include the right of railroad companies to combine as one consolidated and powerful association for the purpose of stifling competition among themselves, and of thus keeping their rates and charges higher than they might otherwise be under the laws of competition, even if their rates and charges are reasonable. *U. S. v. Joint Traffic Assn.*, 171 U. S., 505. 1—869
3. Legislation which renders unlawful contracts, the direct effect of which is to shut out from interstate commerce the operation of the general law of competition, is not an interference with the general liberty of contract possessed by the citizen under the fifth amendment to the Constitution. *Ib.* 1—929
4. The constitutional guaranty of liberty of the individual to enter into private contracts does not limit the power of Congress so as to prevent it from legislating upon the subject of contracts in restraint of interstate or foreign commerce. *Ad-dystone Pipe & Steel Co. v. U. S.*, 175 U. S., 211. 1—1009
5. The provision in the Constitution regarding the liberty of the citizen is to some extent limited by the commerce clause; and the power of Congress to regulate interstate commerce comprises the right to enact a law prohibiting the citizen from entering into those private contracts which directly and substantially, and not merely indirectly, remotely, incidentally, and collaterally, regulate, to a greater or less degree, commerce among the States. *Ib.* 1—1024
6. Constitutional Right of Private Contract Limited by Interstate Commerce Clause.—The constitutional guaranty of liberty to the individual to enter into private contracts is limited to some extent by the commerce clause of the Constitution, and Congress may, in the exercise of the power conferred by such clause, prohibit private contracts which operate to directly and substantially restrain interstate commerce. *U. S. v. Northern Securities Co.*, 120 F., 721. 2—215
7. The constitutional guaranty of liberty of contract does not prevent Congress from prescribing the rule of free competition for those engaged in interstate and international commerce. *Northern Securities Co. v. United States*, 193 U. S., 197. (Harlan, Brown, McKenna, Day.) 2—340
8. Same.—The constitutional guaranty of liberty of contract is not infringed by a Federal court decree enjoining the Northern Securities Co., a corporation formed in pursuance of a combination of stockholders in two competing interstate railway companies for the purpose of acquiring a controlling interest in the capital stock of such companies, from exercising the powers acquired by such corporation by virtue of its acquisition of such stock. (48 L. ed., 679.) 2—342

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9. Only such acts as directly interfere with the freedom of interstate commerce are prohibited to the States by the Constitution. *Field v. Barber Asphalt Co.*, 194 U. S., 618. 2—555
10. Article IV—Has Nothing to Do with the Conduct of Individuals or Corporations.—Article IV of the Constitution of the United States only prescribes a rule by which courts, Federal and State, are to be guided when a question arises in the progress of a pending suit as to the faith and credit to be given by the court to the public acts, records, and judicial proceedings of a State other than that in which the court is sitting. It has nothing to do with the conduct of individuals or corporations. *Minnesota v. Northern Securities Co.*, 194 U. S., 48. 2—533
11. Fourth Amendment. See IMMUNITY, 14, 15; WITNESSES, 8, 20; SEARCH, 2-4; CORPORATIONS, 13, 14, 25; and COURTS, 38.
12. Fifth Amendment. See COURTS, 56, 58; IMMUNITY, 1, 3, 7, 9, 11, 16, 18; and WITNESSES, 1, 2, 4, 11-13, 15, 16, 20, 23.
13. Fourteenth Amendment.—It is not the purpose of the Fourteenth amendment to prevent the States from classifying the subjects of legislation and making different regulations as to the property of different individuals differently situated. The provision of the Federal Constitution is satisfied if all persons similarly situated are treated alike in privileges conferred or liabilities imposed. *Field v. Barber Asphalt Paving Co.*, 194 U. S., 618. 2—555
14. Same.—A State statute which provides that certain improvements are not to be made if a majority of resident owners of property liable to taxation protest, is not unconstitutional because it gives the privilege of protesting to them and not to non-resident owners. *Ib.* 2—559
15. Same.—Discrimination in favor of agricultural products. See *Connolly v. Union Sewer Pipe Co.*, 184 U. S., 540. 2—119.
16. Distinction Between Fifth and Fourteenth Amendments.—There is a substantial distinction between the fifth amendment of the Federal Constitution, which is obligatory only on the United States, and secures due process of law, and the fourteenth amendment, which is obligatory on the States and prohibits the denial of the equal protection of the laws; the latter expression being broader than the former, though the mere denial of equal protection of the laws may run into the other limitation. Mere discrimination, however, does not necessarily have that effect. *U. S. v. N. Y., N. H. & H. R. Co.*, 185 F., 745. 3—529
17. Same.—“Due process of law” does not prohibit the establishment of special commissions or the assignment of special judges for the trial of a specific offender, so long as there is a compliance otherwise with the rules of the common law. *Ib.* 3—529

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18. Same—The expressions “due process of law” and “the law of the land” are synonymous. *Ib.* 3—530
19. Significance of Its Provisions, How to Be Gathered.—Provisions of the Constitution of the United States are not mathematical formulas having their essence in their form, but are organic living institutions transplanted from English soil. Their significance is not to be gathered simply from the words and a dictionary, but by considering their origin and the line of their growth. *Gompers v. U. S.*, 233 U. S., 610. 4—799
20. The Provision of, Prohibiting States from Passing Laws Impairing Obligation of Contracts, Is not a Limitation Upon Congress.—The constitutional provisions prohibiting the States from passing laws impairing the obligations of contracts is not a limitation upon the powers of Congress, to which it has no application. *U. S. v. United Shoe Mach. Co.*, 234 F., 151. 5—829

CONSTRUCTION OF STATUTES.

1. Construction Which Has Become Rule of Property Will Not Be Overruled by Supreme Court.—Where a great majority of the courts to which Congress has committed the interpretation of a law have construed it so that the line of decisions has become a rule of property, the Supreme Court should not, in the absence of clear reason to the contrary, overrule those decisions on certiorari, and so held in this case after reviewing the decisions sustaining the rule of contributory infringement. *Henry v. A. B. Dick Co.*, 224 U. S., 36. 6—768
2. Same—The Patent Law Should Be Construed so as to Give Effect to Purpose of It.—The patent statute is one creating and protecting a true monopoly granted to subserve a broad public policy, and it should be construed so as to give effect to a wise and beneficial purpose. *Ib.* 6—756
3. Will Be so Construed as to Render It Valid.—Where a statute may be so construed as will render it valid, such construction should be adopted. *Thorburn v. Gates*, 225 F., 617. 6—202
4. Courts Must Ascertain What Statute Condemns, in Determining Whether Acts Are Within Its Condemnation.—In order to decide whether acts charged are within the condemnation of a statute, the court must first ascertain what the statute does condemn and that involves its construction. *U. S. v. Patten*, 226 U. S., 535. 4—752
5. Where No Statutory Provision to Guide, a Federal Statute Must Be Construed with Reference to the Common Law, etc.—Where there is no statutory provision to guide it, a Federal statute must be construed with reference to the common law existing prior to the Declaration of Independence; there be-

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ing no Federal common law. *United Copper Sec. Co. v. Amalgamated Copper Co.*, 232 F., 577. 6—448

See also STATUTORY CONSTRUCTION.

CONTEMPT.

1. **Interference with Receiver—Impeding Operation of Railroad.**—Any willful attempt, with knowledge that a railroad is in the hands of the court, to prevent or impede the receiver thereof appointed by the court from complying with the order of the court in running the road, which is unlawful, and which, as between private individuals, would give a right of action for damages, is a contempt of the order of the court. *Thomas v. Cin., N. O. & T. P. Ry. Co.*, 62 F., 815. 1—283
2. **Same—Instigating Strike—Unlawful Combination.**—Maliciously inciting employees of a receiver, who is operating a railroad under order of the court, to leave his employ, in pursuance of an unlawful combination to prevent the operation of the road, thereby inflicting injuries on its business, for which damages would be recoverable if it were operated by a private corporation, is a contempt of the court. *Ib.* 1—283
3. **Same—Constitutional Guaranty of Right of Assembly and Free Speech.**—Such inciting to carry out an unlawful conspiracy is not protected by constitutional guaranties of the right of assembly and free speech, and is not less a contempt because effected by words only, if the obstruction to the operation of the road by the receiver is unlawful and malicious. *Ib.* 1—292
4. **Contempt—Proceeding in Equity—Conclusiveness of Answer.**—In proceedings for contempt in equity, a sworn answer, however full and unequivocal, is not conclusive, even in the case of a stranger to the bill for the injunction which has been violated. *U. S. v. Debs*, 64 F., 738. 1—339
5. **Same—Justification—Irregularities.**—Where a court had jurisdiction of an injunction suit, and did not exceed its powers therein, no irregularity or error in the procedure or in the order can justify disobedience of the writ. *Ib.* 1—340
6. **Same.**—In a proceeding for contempt in disobeying an injunction, the sufficiency of the petition for the injunction, in respect to matters of form and averment merely can not be questioned. *Ib.* 1—340
7. **Contempt—Trial by Court.**—Though the same act constitute a contempt and a crime, the contempt may be tried and punished by the court. *Ib.* 1—349
8. **Contempt—Violation of Injunction—Conspiracy.**—Where defendants, directors, and general officers of the American Railway Union, in combination with members of the union, engaged in a conspiracy to boycott Pullman cars, in use on railroads, and for that purpose entered into a conspiracy

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- to restrain and hinder interstate commerce in general, and, in furtherance of their design, those actively engaged in the strike used threats, violence, and other unlawful means of interference with the operations of the roads, and, instead of respecting an injunction commanding them to desist, persisted in their purpose, without essential change of conduct, they were guilty of contempt. *Ib.* 1—375
9. Same—Interference with Receiver.—Any improper interference with the management of a railroad in the hands of receivers is a contempt of the court's authority in making the order appointing the receivers, and enjoining interference with their control. *Ib.* 1—376
10. The order of the Circuit Court finding the petitioners guilty of contempt, and sentencing them to imprisonment, was not a final judgment or decree. *In re Debs*, 158 U. S., 573. 1—573
11. Violation of Injunction—Contempt.—An injunction having been issued and served upon the defendants, the Circuit Court had authority to inquire whether its orders had been disobeyed, and when it found that they had been disobeyed, to proceed under Revised Statutes, section 725, and to enter the order of punishment complained of. *Ib.* 1—598
12. Same—Habeas Corpus.—The Circuit Court having full jurisdiction in the premises, its findings as to the act of disobedience are not open to review on *habeas corpus* in this or any other court. *Ib.* 1—598
13. Witness—Incriminating Evidence.—Where a witness is committed for contempt in refusing to answer all of a series of questions, for the reason that the answers would tend to criminate him, and some of the answers would have that tendency, he should not be denied relief on *habeas corpus* because some of the questions might be safely answered. *Foot v. Buchanan*, 113 F., 156. 2—104
14. Although the subpoena duces tecum may be too broad in its requisition, where the witness has refused to answer any question, or to produce any books or papers, this objection would not go to the validity of the order committing him for contempt. *Hale v. Henkel*, 201 U. S., 43. 2—874
15. Civil and Criminal Are Different, and Governed by Different Rules.—Civil and criminal contempts are essentially different and are governed by different rules of procedure. *Gompers v. Bucks Stove & Range Co.*, 221 U. S., 444. 4—785
16. Same—Civil Contempt Defined.—A proceeding, instituted by an aggrieved party to punish the other party for contempt for affirmatively violating an injunction in the same action in which the injunction order was issued, and praying for damages and costs, is a civil proceeding in contempt, and is part of the main action, and the court can not punish the contempts by imprisonment for a definite term; the only

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punishment is by fine measured by the pecuniary injury sustained. *Ib.* 4—784

17. **Same—In Criminal, Party Entitled to Protection Against Self-Incrimination.**—In criminal proceedings for contempt the party against whom the proceedings are instituted is entitled to the protection of the constitutional provisions against self-incrimination. *Ib.* 4—785

18. **Same—Variance Between the Procedure to Punish Civil and Criminal Contempts.**—There is a substantial variance between the procedure adopted and punishment imposed, when a punitive sentence appropriate only to a proceeding for criminal contempt is imposed in a proceeding in an equity action for the remedial relief of an injured party. *Ib.* 4—789

19. **Is Not Criminal, When Up to Time of Sentence, Is Treated as Part of Original Proceeding.**—A punitive sentence appropriate only to a proceeding at law for criminal contempt where the contempt consisted in doing that which had been prohibited by an injunction could not properly be imposed in contempt proceedings which were instituted, tried, and, up to the moment of sentence, treated as a part of the original cause in equity. *Ib.*, 57 L. Ed., 797. 4—785

20. **None the Less Offensive, Because Right of Trial by Jury Does Not Extend to Them.**—Contempts are none the less offensive because trial by jury does not extend to them as a matter of constitutional right. *Gompers v. U. S.*, 233 U. S., 610. 4—799

21. **Same—Are None the Less Crimes Within Section 1044, Although Right of Trial by Jury Does Not Extend to Them.**—Criminal contempts are none the less crimes within the meaning of Rev. Stat. § 1044, prescribing a three years' limitation for criminal prosecutions, because the constitutional right of trial by jury in criminal cases does not extend to such contempts. *Ib.*, 58 L. Ed., 1115. 4—799

22. **Writing of Letters by Party Enjoined Criticizing Injunction, etc., But Not Calculated to Incite Disobedience to It, Not a Contempt.**—Under section 725, Rev. Stat., authorizing United States courts to punish contempts of their authority, but providing that such power shall not be construed to extend to cases except the misbehavior of any person in their presence or so near thereto as to obstruct the administration of justice, the writing of letters by a party enjoined from doing certain acts, criticizing the Government and the litigation instituted by it, resulting in the injunction, but not directly calculated to incite disobedience to the injunction decree, was not a contempt. *U. S. v. Southern Wholesale Grocers' Ass'n*, 207 F., 444. 5—328

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CONTRACTS.

1. **Contract for Entire Product.**—A contract with an independent manufacturer for the entire product of his plant is not in itself a contract in illegal restraint of trade. *Carter-Crume Co. v. Perrung*, 68 F., 439. 1—845
2. **Same.**—If an independent manufacturer contracts to sell his entire product, without knowledge of similar contracts made by the buyer with other manufacturers, and without any knowledge of the fact that such contract was intended by the buyer as one step in a general scheme for monopolizing the trade in that article and controlling prices, such independent manufacturer can not be held to have conspired against the freedom of commerce, or to have made a contract in illegal restraint of trade. *Ib.* 1—847
3. **Purchase of Business—Combination in Restraint of Trade.**—A contract by which a person sells his property and business good will to another can not be repudiated on the ground that the purchaser acquired the property for the purpose of obtaining a monopoly of the business and in pursuance of an illegal combination in restraint of interstate trade and commerce. *Camors-McConnell Co. v. McConnell*, 140 F., 412. 2—817
4. **Same.**—In order to defeat a suit to enforce such a contract on the ground that its enforcement is sought to aid and facilitate the carrying out of an illegal combination to monopolize interstate trade and commerce, it must appear that the contract is directly connected with such unlawful purpose, and not merely collateral thereto. *Ib.* 2—819
5. **Same.**—Although the combination may be unlawful, an action for the performance of the contract can not be defeated upon the ground that plaintiff is carrying on its business in an unlawful manner as a monopoly. *Ib.* 2—820
6. **Same.**—An agreement, as incidental to the sale of property as a business, that the seller will not enter into a competing business, is valid and enforceable, notwithstanding it is in partial restraint of trade. *Ib.* 2—820
7. **Same—Specific Performance—Sale of Business—Enjoining Violation.**—A court of equity will enjoin a defendant from violating a contract, clearly shown, by which he deliberately obligated himself for a valuable consideration not to engage in a certain business. *Ib.* 2—824
8. **Purchaser of River Craft not Relieved from Obligation to Pay Purchase Price Because of His Agreement to Maintain Present Traffic Rates.**—A purchaser of river craft can not invoke the Sherman Law to relieve him from his obligation to pay the purchase price, because of his covenant to maintain the present traffic rates, which is not declared by the contract to enter into the consideration of the sale—

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especially where the rates referred to primarily, if not exclusively, relate to domestic, and not to interstate, business. *Cincinnati, etc., Packet Co. v. Bay*, 200 U. S., 179. 2—867

9. Same.—A contract is not to be assumed to contemplate unlawful results unless a fair construction requires it. *Ib.* 2—872
10. Same.—Where a contract relates to commerce between points within a State, both on a boundary river, it will not be construed as falling within the prohibitions of the Sherman Act because the vessels affected by the contract sail over soil belonging to the other State while passing between the intrastate points. *Ib.* 2—872
11. Same.—Even if there is some interference with interstate commerce, a contract is not necessarily void under the Sherman Law if such interference is insignificant and merely incidental and not the dominant purpose; the contract will be construed as a domestic contract and its validity determined by the local law. *Ib.* 2—872
12. Same.—A contract for sale of vessels, even if they are engaged in interstate commerce, is not necessarily void because the vendors agree, as is ordinary in case of sale of a business and its good will, to withdraw from business for a specified period. *Ib.* 2—873
13. Any contract or combination which directly and substantially restricts the right of an interstate carrier to fix its own rates, independently of its natural competitors, places a direct restraint upon interstate commerce, in that it tends to prevent competition, and is in violation of the act, whether the rates actually fixed be reasonable or unreasonable. *U. S. v. Northern Securities Co.*, 120 F., 721. 2—215
14. Contracts—Proprietary Medicines.—A system of contracts made by the manufacturer of a proprietary medicine between him and wholesale dealers, to whom alone he sold his medicine, by which they were bound to sell only at a certain price and to retail dealers designated by him, and between him and the retail dealers by which, in consideration of being so designated, they agreed to sell to consumers only at a certain price, is not unlawful as in restraint of trade, but is a reasonable provision for the protection of the manufacturer's trade, and he is entitled to an injunction to restrain a defendant from inducing other parties to such contracts to violate the same. *Hartman v. John D. Park & Sons Co.*, 145 F., 358. 2—1000
See also Dr. Miles Medical Co. v. Jaynes Drug Co., 149 F., 838.
15. A contract for the sale of merchandise is not rendered illegal by the fact that the selling corporation is a trust or monopoly organized in violation of law, either Federal or State, the contract of sale being collateral and having no direct rela-

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- tion to the unlawful scheme or combination. *Chicago Wall Paper Mills v. General Paper Co.*, 147 F., 491. 2—1027
16. **Contracts Limiting Character of Material to be Used to that Controlled by a Single Corporation.**—Where the contract for the paving of a street with asphalt limited the kind of asphalt to be used to Trinidad asphalt, such fact, and the further fact that such asphalt was controlled by a single corporation, was not violative of the commerce clause of the Constitution or of the Sherman Law and did not affect the validity of the contract. *Field v. Barber Asphalt Pav. Co.*, 117 F., 925. 2—193
- Affirmed, 194 U. S., 618 (2—555).
17. **Illegal.**—Parties to a transaction adjudged to violate the Anti-Trust Act are not exempt from the doctrine *in pari delicto* on the theory that they acted in good faith and without intent to violate the law, where, with knowledge of the facts and of the statute, they acted under the mistaken supposition that the statute would not be held applicable to the facts. *Harriman v. Northern Securities Co.*, 197 U. S., 244. 2—660
- Affirming, 134 F., 331 (2—618).
Reversing, 132 F., 464 (2—587).
18. **Same.**—Property delivered under an executed illegal contract can not be recovered back by any party *in pari delicto*, and the courts can not relax the rigor of this rule where the record discloses no special considerations of equity, justice, or public policy. *Ib.* 2—713
19. **Same.**—Where a vendor after transferring shares of railway stock to a corporation in exchange for its shares becomes a director of the purchasing corporation and participates in acts consistent only with absolute ownership by it of the railway stocks, and does so after an action has been brought to declare the transaction illegal, his right to rescind the contract and compel restitution of his original railway shares, if it ever existed, is lost by acquiescence and laches. *Ib.* 2—715
20. **Effect of Illegal Provisions—Divisibility.**—Stipulations in a contract which are invalid as in restraint of trade, if capable of being construed divisibly, do not affect the validity of other provisions. *U. S. Consolidated Seeded Raisin Co. v. Griffin & Skelley Co.*, 126 F., 364. 2—288
21. **Same—Validity—When Question for Jury.**—Conceding that a contract legal in its terms and in its consideration may be rendered illegal as against public policy by reason of the intention of the parties to so use it as to commit civil injury to third persons, where the evidence as to such intention is conflicting, the contract can not be declared illegal by the court as matter of law. *Ib.* 2—298

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22. **Effect of Sherman Law upon Contracts in Restraint of Trade which at Common Law Were Not Unlawful.**—The effect of the Sherman Law is to render contracts in restraint of trade, as applied to interstate commerce, unlawful in an affirmative or positive sense, and punishable as a misdemeanor, and also to create a right of civil action for damages in favor of persons injured thereby, and a remedy by injunction in favor both of private persons and the public against the execution of such contracts and the maintenance of such trade restraints. *U. S. v. Addyston Pipe & Steel Co.*, 85 F., 271. 1—772
See also *Continental Wall Paper Co. v. Lewis Voight & Sons Co.*, 148 F., 939 (3—44); 212 U. S., 227 (3—480).
23. **The statute is not limited to contracts or combinations which monopolize interstate commerce in any given commodity, but seeks to reach those which directly restrain or impair the freedom of interstate trade.** The law reaches contracts and combinations which may fall short of complete control of a trade or business, and does not await the consolidation of many small combinations into the huge "trust" which shall control the production and sale of a commodity. *Chesapeake & O. Fuel Co. v. United States*, 115 F., 610, 624. 2—168
24. **Applies to Common Carriers by Railroads—Contracts Affecting Rates.**—The provisions respecting contracts, combinations, and conspiracies in restraint of trade or commerce among the several States or with foreign countries, contained in the Sherman Law, apply to and cover common carriers by railroad; and a contract between them in restraint of such trade or commerce is prohibited, even though the contract is entered into between competing railroads, only for the purpose of thereby affecting traffic rates for the transportation of persons and property. *U. S. v. Trans-Mo. Ft. Assn.*, 166 U. S., 290. 1—648
25. **Act Applies to All Contracts in Restraint of Interstate or Foreign Commerce—Not Confined to Unreasonable Restraints.**—The prohibitory provisions of the Sherman Law apply to all contracts in restraint of interstate or foreign trade or commerce without exception or limitation; and are not confined to those in which the restraint is unreasonable. *Id.* 1—648
26. **Test of Legality of a Contract or Combination.**—The Sherman Law does not leave to the courts the consideration of the question whether the restraint is or is not unreasonable and such as would have rendered the contract invalid at common law. The only question in each case where the validity of a contract or combination under the law is involved is whether or not its necessary effect is to restrain interstate commerce. *Chesapeake & Ohio Fuel Co. v. U. S.*, 115 F., 610. 2—151

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27. Same.—The test of the violation of the Sherman Law, by a contract or combination, is its effect upon competition in commerce among the States. If its necessary effect is to stifle or to directly and substantially restrict interstate commerce, it falls under the ban of the law, but if it promotes, or only incidentally or indirectly restricts, competition, while its main purpose and chief effect are to promote the business and increase the trade of the makers, it is not denounced or avoided by that law. *Phillips v. Iola Portland Cement Co.*, 125 F., 593. 2—284
28. The Sherman Law is not intended to affect contracts which have only a remote and indirect bearing on commerce between the States. *Feld v. Barber Asphalt Paving Co.*, 104 U. S., 618. 2—555
29. The Sherman Law does not apply to a contract or combination relating to the business of manufacturing within a State. *Robinson v. Suburban Brick Co.*, 127 F., 804. 2—312
30. The Sherman Law does not, and could not constitutionally, affect any monopoly or contract in restraint of trade, unless it interferes directly and substantially with interstate commerce, or commerce with foreign nations. *U. S. v. Addyston Pipe & Steel Co.*, 78 F., 712. 1—630
31. What Contracts, Combinations, or Conspiracies Violate the Sherman Law.—Every contract, combination, or conspiracy, the necessary effect of which is to stifle or to directly and substantially restrict competition in commerce among the States is in restraint of interstate commerce, and violates section 1 of the Sherman Law. *Whitwell v. Continental Tobacco Co.*, 125 F., 454. 2—271
32. What Acts, Contracts, and Combinations Do Not Violate the Sherman Law.—Acts, contracts, and combinations which promote, or only incidentally or indirectly restrict, competition in commerce among the States, while their main purpose and chief effect are to foster the trade and increase the business of those who make and operate them, are not in restraint of interstate commerce or violative of section 1 of the Sherman Law. *Id.* 2—283
33. Section 1 of the Sherman Law makes a distinction between a contract and a combination or conspiracy in restraint of trade. *Rice v. Standard Oil Co.*, 134 F., 464. 2—633
34. Contract for Sale of Goods by Member of Combination.—Section 1 of the Sherman Law does not invalidate or prevent a recovery for the breach of a collateral contract for the manufacture and sale of goods by a member of a combination formed for the purpose of restraining interstate trade in such goods. *Hadley Dean Plate Glass Co. v. Highland Glass Co.*, 143 F., 242. 2—995

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35. A system of contracts between manufacturers and wholesale and retail merchants by which the manufacturers attempt to control not merely the prices at which its agents may sell its products, but the prices for all sales by all dealers at wholesale or retail whether purchasers or sub-purchasers, eliminating all competition and fixing the amount which the consumer shall pay, amounts to restraint of trade and is invalid both at common law, and, so far as it affects interstate commerce, under the Sherman Law. *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U. S., 400. 4—24, 32
36. Same.—Such agreements are not excepted from the general rule and rendered valid because they relate to proprietary medicines manufactured under a secret process but not under letters patent; nor is a manufacturer entitled to control prices on all sales of his own products in restraint of trade. *Ib.* 4—31
37. Same.—The rights enjoyed by a patentee are derived from statutory grant under authority conferred by the Constitution, and are the reward received in exchange for advantages derived by the public after the period of protection has expired; and the rights of one not disclosing his secret process so as to secure a patent are outside of the policy of the patent laws, and must be determined by the legal principles applicable to the ownership of such process. *Ib.* 4—25
38. Same.—The protection of an unpatented process of manufacture does not necessarily apply to the sale of articles manufactured under the process. *Ib.* 4—26
39. Same.—A manufacturer of unpatented proprietary medicines stands on the same footing as to right to control the sale of his product as the manufacturers of other articles, and the fact that the article may have curative properties does not justify restrictions which are unlawful as to articles designed for other purposes. *Ib.* 4—27
40. Same.—A manufacturer of unpatented articles can not, by rule or notice, in absence of statutory right, fix prices for future sales, even though the restriction be known to purchasers. Whatever rights the manufacturer may have in that respect must be by agreements that are lawful. *Ib.* 4—28
41. License Contract Under Patents May Constitute a Conspiracy in Restraint of Trade.—Conceding that a number of patents relating to the same art may be united by purchase in the same ownership, and that the grant of combination licenses thereunder on conditions specified may be within the lawful monopoly given by the patent law, yet to be immune from the operation of the Sherman Law the contract must be referable solely to the inventions under the patents, and intended to secure a monopoly in the beneficial use of specific inventions only; and where it extends beyond such purpose, and is

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intended to create a monopoly in the manufacture of the article to which the patents relate by securing and holding for the benefit of the parties all patents relating thereto under which such manufacture may be carried on, and not for the protection of patent rights, it may constitute a conspiracy and combination in restraint of trade in violation of the law. *Indiana Mfg. Co. v. Case Threshing Machine Co.*, 148 Fed., 21. 3—25

42. Same.—Complainant acquired by purchase the ownership of, or exclusive license to use, 21 United States and 2 Canadian patents, all relating to pneumatic straw stackers, and confederated all of the manufacturers of threshing machines in the country in a plan of uniform licenses under the combined patents with a uniform price fixed for the product and payment of royalty to complainant for each machine until the end of the full term of any of the patents or of any which might thereafter be acquired by complainant. It thereafter acquired numerous other patents, until it held over 100 in all. The devices of such patents were not all capable of conjoint use in a single machine. None of them covered the pioneer invention of a wind stacker. A number covered non-interfering devices performing the same functions, and capable of independent use by different manufacturers, and many were of no practical value, and not used by any of the licensees. *Held*, that the purpose and effect of such system of contracts was to create a monopoly in wind-stacker products without reference either to any specific invention or the validity of any patent; that the agreement fixing the selling price of any form of the product was not attributable to any patent in the list nor to specific invention in either of the patent devices, and was not within protection of the patent law, and that the combination created by such contracts was in restraint of trade and illegal as in violation of the Sherman Law, and the contracts not enforceable in equity. *Ib.* 3—29

43. Contracts Relating to Patented Articles.—Complainant, which was the owner of a number of patents relating to pneumatic straw stackers, granted licenses to manufacturers of threshing machines by which they were given the right to use any or all inventions covered by such patents and required to sell stackers made thereunder at a stated price and to pay complainant a royalty on each stacker so made and sold. They were also given the right to use the inventions covered by any other patents relating to the art which should thereafter be acquired by complainant, and it did afterward acquire the ownership of practically all patents relating to such stackers. *Held*, that such contracts were not in restraint of competition and in violation of the

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Sherman Law, but were within complainant's right under the patent laws, although all of the manufacturers of threshing machines in the United States became licensees, there being no right in the public to free competition in articles covered by patents. *Indiana Mfg. Co. v. Case Threshing Mach. Co.*, 154 F., 369. 3—288

44. **Contracts in Restriction of Use of Patented Articles.**—Contracts between manufacturers of liquid door checks under various patents, by which each agreed to restrict its own trade in the article of his own invention, not as an incident to a grant of rights under patents, but to enhance the price by the removal of competition, and which constituted a general plan to regulate and control the business of dealing in such checks sold in interstate commerce, the plan comprehending the maintenance of price, the pooling of profits, the elimination of competition, and restraint of improvements, constituted a violation of the Sherman Law, and were therefore unenforceable. *Blount Mfg. Co. v. Yale & Towne Mfg. Co.*, 166 F., 556. 3—577

45. **Same.**—Where certain contracts between manufacturers of liquid door checks restrained each of the parties in the exercise of its rights under its own patents and in the sale of its articles made thereunder, the contracts were not rendered valid, though in restraint of interstate commerce, because they also authorized each of the parties to use patented inventions belonging to the others. *Ib.* 3—585

46. **Legality of License Contracts.**—A system of contracts between the owner of a patent for rubber-tired wheels and its licensees, fixing uniform prices and the percentage of the whole output which should be made and sold by each licensee, and providing that the business of all should be supervised by commissioners appointed by the licensor, is not rendered invalid by a provision for the accumulation of a fund by such commissioners with power to use the same with the consent of a majority in the purchase of tires from any or all of the licensees and to sell the same to the trade at such prices as they should deem for the best interest of all; it being within the right of the owner of the patent, either itself or through its licensees, to push the sale of its tires, and in doing so to undersell the makers of other tires or infringers. *Rubber Tire Wheel Co. v. Milwaukee Rubber Works Co.*, 154 F., 363. 3—280

47. **Modification of Contract with Licensees.**—Since the public, by licenses to manufacture patented automobile tires, only secured the right to purchase the tires after they have been manufactured and offered for sale, and has no right to have the competition between the different licensees continued, a modification of the licenses between the owner of the pat-

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- ent and the various licensees regulating the manufacture and sale of such tires was not objectionable as a restraint of trade, in violation of the Sherman Law. *Goshen Rubber Works v. Single Tube A. & B. Tire Co.*, 166 F., 433. 3—574
48. **Sale of Articles Made by Secret Process.**—The owner of a secret process or formula is not protected by law in his secret, but he may protect himself by contract against its disclosure by one to whom it is communicated in confidence, or restrict its use by such person, and such contracts are not in restraint of trade because of the character of the property right in the secret which would be destroyed by its disclosure, and because it is not in itself an article of commerce, but such considerations do not apply to contracts for the sale of the manufactured product which do not involve a disclosure of the secret, and such contracts are within the rules against restraint of trade. *Park & Sons Co. v. Hartman*, 153 F., 29. 3—237
49. **Same.**—The fact that an article of commerce is sold under a trade-name or in a trade dress affords it no exemption from the common-law or statutory rules against restraint of trade. *Ib.* 3—242
50. **Same—Single Contract.**—A single contract, although it be such as, taken alone, may not be within the rule at common law against contracts in restraint of trade, which is one of a great number of identical contracts made between the producer of an unpatented article of commerce and dealers therein, forming a "system" of contracts, which, taken as a whole, materially affects the public interests by stifling competition and trade in said article, is an unreasonable restraint, and within the rule at common law against contracts in restraint of trade, if, from an examination of the workings of the whole system, it appears that the restraint is actually, though not ostensibly, the main result and object of the system of contracts, and not merely ancillary or incidental to another and legitimate object. *Ib.* 3—257
51. **Same.**—The sole manufacturer of a medicine made in accordance with a secret formula, but unpatented, sold the same only under a system of contracts between himself and wholesale dealers to whom alone he sold at uniform prices, by which they bound themselves to sell at a certain price and only to retail dealers designated by him, and between him and such retail dealers, by which in consideration of being so designated they bound themselves to sell to consumers only and at a certain price. Such contracts had been entered into as the manufacturer alleged by a large majority of the wholesale and retail druggists in the United states. *Held*, that such system of contracts was *prima facie* illegal both at common law as in unreasonable restraint

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of trade and under the Sherman Law, where it affected interstate sales; its purpose and effect being to prevent competition between purchasers of the medicine both wholesale and retail, and that, in the absence of allegation of facts showing it to be necessary for the protection of the manufacturer's business, a court of equity would not aid in the enforcement of the contracts by granting an injunction to prevent a defendant, who was not a party thereto, from buying the medicine from purchasers who were, and reselling the same at any price it might see fit. *Ib.* 3—260

52. **Sale of Proprietary Medicine.**—A system of contracts between the manufacturer of a proprietary medicine made in accordance with a secret formula but unpatented and all dealers authorized by it to handle such medicine, whether regarded as contracts of sale or agency, by which jobbers are prohibited from selling to any except retailers licensed by such manufacturer, and retailers are prohibited from selling to any save those licensed to buy or to persons buying for consumption only, and neither jobber nor retailer is permitted to sell except at prices imposed by the manufacturer, the purpose and effect being to maintain prices by preventing competition in price between either jobbers or retailers, where it affects interstate sales is illegal, both at common law and under the Sherman Law. *Dr. Miles Medical Co. v. J. D. Park & Sons Co.*, 164 F., 804. 3—472

53. **Same.**—Contracts between the manufacturer of a proprietary medicine and jobbers dealing in the same which purport to be consignment contracts and to make the jobbers agents for the manufacturer and provide that title to the goods shall remain in the manufacturer until they are sold by the jobber to purchasers whom it has licensed to buy the same and at prices fixed by it, but which obligate the jobbers to pay a fixed price for the medicine without the right to return it and under which the title is retained even after the price has been paid or "advanced," are mere subterfuges to disguise purchasers in the mask of agency and to evade the law which would make open contracts of sale with the same restrictions upon resale illegal as in restraint of trade, and are in fact contracts of sale and not of agency. *Ib.* 3—473

54. **By Manufacturers of Bath-Tubs to Control Prices.**—Sixteen corporations, producing 78 per cent of all the sanitary enameled iron ware, such as bath-tubs, sinks, etc., made in the United States, by mutual agreement previously made, entered into contracts by which they bound themselves to sell certain grades of the ware only at prices and on terms fixed in schedules attached, or by a committee, and only to jobbers who should sign the resale contract prepared

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by them. Such contract was signed by 80 per cent of the jobbers in the United States, and bound them to purchase only from some one of the 16 manufacturers, and to sell only at prices named in their resale price lists. *Held*, that such contracts entered into by the manufacturers were solely for the purpose of fixing prices and destroying competition, and constituted a combination in restraint of interstate commerce, and an attempt to monopolize such commerce, which was unlawful, as in violation of Sherman Law. *U. S. v. Standard Sanitary Mfg. Co.*, 191 F., 182. 4—409

55. **Illegality of Contract Defense to Action for Recovery of Price of Wall Paper Sold.**—Plaintiff corporation formed an illegal combination of manufacturers and wholesalers of wall paper in the United States, which constituted a restraint of interstate commerce, and a violation of the Sherman Law. Under the contract between plaintiff and the manufacturers, plaintiff was the nominal seller of all the wall paper manufactured by the combination, though it was actually purchased from various jobbers or mills within the combination. Defendants, wholesalers of wall paper, having been compelled to enter the combination and agree to purchase and sell wall paper in accordance with the monopolistic terms of the contract, purchased paper from various members of the combine, for which plaintiff brought suit. *Held* that, since plaintiff was bound to rely on the combination contract to show its capacity to sue, the illegality thereof constituted a defense to the action. *Continental Wall Paper Co. v. Voight & Sons Co.*, 148 F., 950. 3—60

56. **Contract in Restraint of Trade Unenforceable.**—Where a contract for the sale of a business in which defendant was formerly a partner provided for the organization of complainant corporation in order that another corporation, which was practically a trust, organized to monopolize the business in which complainant was engaged, and declared that for a specified period defendant should not enter into a competing business, after which, and as a part of the arrangement, the trust corporation acquired a monopoly of the business in the United States and stifled competition, the contract was in violation of the Sherman Law, to prevent unlawful restraints and monopolies, and was therefore unenforceable. *McConnell v. Camors-McConnell Co.*, 152 F., 331. 3—200

57. **Sale of Business and Good Will.**—The sale of a business and the good will pertaining to it, and an agreement, within reasonable limitations as to time and territory, not to enter into competition with the purchaser, when made as a part of the sale of the business, and not as a device to control commerce, is not within the Sherman Law, but such act

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renders unlawful every contract, combination, or conspiracy which directly or necessarily operates in restraint of trade between the States without regard to the form which the transaction takes. *Darius Cole Transp. Co. v. White Star Line*, 186 F., 65. 4—37

58. **Same—Lease of Vessel.**—Libellant and respondent were both owners of steamers running regularly between Detroit and Toledo, and for a number of years had operated under a pooling arrangement which gave them a monopoly. At the expiration of such arrangement libellant sold one of its boats and leased the other to respondent for a term of three years to be run between such two points, and at the same time transferred its good will, and agreed not to engage in competition during the term. The rental reserved was more than the steamer could have earned operated independently. *Held*, on the evidence, that the dominant purpose of the parties was to enable respondent to maintain its monopoly of the business, and that the lease was void as in violation of the Sherman Law, and rent could not be recovered thereon. *Ib.* 4—38

59. **Restraint Must Be Direct and Substantial in Character.**—To bring any transaction within the condemnation of the Sherman Law, it must be a contract, combination, or conspiracy in restraint of international or interstate commerce, and this restraint must be substantial in character and the direct and immediate effect of the transaction complained of. *U. S. v. Union Pacific R. Co.*, 188 F., 109. 4—313

60. **Same—To Strangle Competition by Preventing Construction of Competing Railway.**—A contract to strangle a threatened competition, by preventing the construction of an immediately projected line of railway, which, if constructed, would naturally and substantially compete with an existing line for interstate traffic, is one in restraint of interstate commerce, and in violation of the Sherman Law. *Ib.* 4—324

61. **Illegality of Contracts—Restraint of Competition.**—Where the necessary effect of an agreement between manufacturers is clearly to restrain interstate trade within the purview of the Sherman Law, it can not be taken out of the category of the unlawful by general reasoning as to its expediency or non-expediency or the wisdom or want of wisdom of the statute. *U. S. v. Standard Sanitary Mfg. Co.*, 191 F., 182. 4—410

62. **The prohibitory provisions of the Sherman Law apply to all contracts in restraint of interstate or foreign trade or commerce, without exception or limitation, and are not confined to those in which the restraint is unreasonable.** *Ware-Kramer Tobacco Co. v. American Tobacco Co.*, 180 F., 165. 3—787

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- 63. Immaterial Where Illegal Contract Entered Into.**—Where a contract directly and materially affects the foreign commerce of this country by being put into effect here, it is immaterial where it was entered into. *U. S. v. Hamburg-American Line*, 200 F., 807. 4—895
- 64. If a contract in restraint of trade affects products only within the limits of the State, it is subject only to State laws, any remote or incidental effect on interstate commerce being insufficient to bring it within the Federal law; but if, in addition, it attempts to control the disposition of the manufactured article across State lines, it then directly affects interstate commerce, and is within the prohibition of the Sherman Law.** *Penna. Sugar Ref. Co. v. American Sugar Ref. Co.*, 166 F., 257. 3—556
- 65. A contract by which a manufacturing company whose products are sold in interstate commerce, makes another sole agent for the sale of its products, is not in violation of the Sherman Law as in restraint of interstate trade and commerce; its effect on such commerce, if any, being indirect and incidental.** *Virtue v. Creamery Package Mfg. Co.*, 179 F., 117. 3—798
- 66. English Rule Respecting Right of Contract.**—At the time of the passage of the Sherman Law the English rule was that the individual was free to contract and to abstain from contracting and to exercise every reasonable right in regard thereto, except only as he was restricted from voluntarily and unreasonably or for wrongful purposes restraining his right to carry on his trade. (*Mogul Steamship Co. v. McGregor*, 1892, A. C. 25.) *Standard Oil Co. v. U. S.*, 221 U. S., 56. 4—126
- 67. Same.**—A decision of the House of Lords, although announced after an event, may serve reflexly to show the state of the law in England at the time of such event. *Ib.* 4—126
- 68. Same.**—This country has followed the line of development of the law of England, and the public policy has been to prohibit, or treat as illegal, contracts, or acts entered into with intent to wrong the public and which unreasonably restrict competitive conditions, limit the right of individuals, restrain the free flow of commerce, or bring about public evils such as the enhancement of prices. *Ib.* 4—128
- 69. Same.**—The original doctrine that all contracts in restraint of trade were illegal was long since so modified in the interest of freedom of individuals to contract that the contract was valid if the resulting restraint was only partial in its operation and was otherwise reasonable. *Ib.* 4—122
- 70. Same.**—Freedom to contract is the essence of freedom from undue restraint on the right to contract. *Ib.* 4—132

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- 71. Between Steamship Lines for Division of Steerage Passenger Transportation, Unlawful.**—A contract between steamship lines for division of steerage passenger transportation between the United States and Europe according to specified percentages, containing stipulations for the pooling of receipts and embracing provisions to secure its enforcement, and, while leaving the fixing of rights to individual discretion, providing that the holders of 75 per cent of the shares of traffic might direct any party to raise or reduce its charges, directly and materially affected foreign commerce, and since, with reference to eastbound traffic, the actual commencement of the transportation was within the territory of the United States, the contract was an unlawful combination and conspiracy, in violation of the Sherman Law. *U. S. v. Hamburg-American Line*, 200 F., 807. 4—894
- 72. Same—Where Contract Constitutes Illegal Combination, Immaterial Where It Was Entered Into.**—Where a contract for international transportation of steerage passengers between the United States and European ports constituted an illegal combination and conspiracy in violation of the Sherman Law, and was in restraint of foreign trade and commerce, materially affecting the foreign commerce of the United States, and was intended to be put into force here, it was immaterial where it was entered into, or that it was to be carried out or performed in foreign countries, or by the use of foreign vessels. *Ib.* 4—895
- 73. Agreeing to Withdraw from Employment in Case of Joining a Union, Did Not Bind Employee Not to Join, but Only to Terminate His Employment with Company.**—Complainant, on employing miners, required them to sign a contract declaring that they were not members of the United Mine Workers of America and would not become so while employees of complainant, which agreed to run its works non-union, and that if at any time during the employment an employee should become connected with the United Mine Workers of America or any affiliated organization he agreed to withdraw from the employment of the company, etc. *Held*, that such contract did not bind the employee not to join the union, but only provided for termination of the contract in case they did so; and hence solicitation of such employees and inducements held out to them to join the union, by lawful and persuasive methods not coercive nor intimidating, did not constitute an unlawful interference with such contract of employment. *Mitchell v. Hitchman Coal & Coke Co.*, 214 F., 714. 5—632
- 74. Where Open to Two Reasonable Interpretations, Court Will Adopt That Sustaining Claim for Balance Due Thereon.**—If contracts between a manufacturer of motor cars and a dealer, claimed to violate the Anti-Trust Laws of the State,

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were open to two reasonable interpretations, one defeating the manufacturer's claim for a balance due and the other enforcing it, the court would be at liberty to adopt the latter interpretation. *Cole Motor Car Co. v. Hurst*, 228 F., 282.

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- 75. Same—Held to Be One of Consignment and Not of Sale, and an Interstate Contract.**—Contracts between a manufacturer of motor cars and a dealer, designated as a distributor, provided that cars would be invoiced to the distributor at the regular catalogue price, subject to certain discounts constituting his profits; that he should have the exclusive right to sell the manufacturer's cars in certain designated territory within the State of Texas, and not elsewhere; that remittances for all cars shipped to him would be made the same day cars were sold; that, when cars were shipped direct to his agents, sight drafts would be drawn and a check mailed by the manufacturer on Monday of each week, covering commissions due on shipments for which payments had been received during the previous week; that the distributor would keep the cars insured in the manufacturer's name until sold and paid for; that if the contract was canceled the manufacturer would take over any new cars then on the distributor's show floor at the invoice price with carload freight added; and that if the distributor canceled the contract he would take and pay for all cars on hand or in transit. The contract was made in Indiana, and the cars were to be shipped from Indiana f. o. b. to the distributor in Texas. *Held*, that the transaction was a consignment, and not a sale, and the contract was an interstate one, the validity of which was governed by the Federal Anti-Trust Laws, and not by the Anti-Trust Laws of Texas. *Ib.*

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- 76. Same—Held Valid, As It in No Way Restrained Competition in Trade.**—The contract was valid under the Anti-Trust Laws, both of the United States and of Texas, as it in no way restrained competition or trade. *Ib.*

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- 77. For Furnishing a Patented Machine for Attaching Shoe Buttons, in the Use of Which Only Wire Furnished by Patentee Was to Be Used, Held to Be a Revocable License, etc.**—Complainant furnished to defendant a patented machine for attaching shoe buttons, bearing a plate stating that it was lent or leased and accepted to use wire bearing complainant's trademark only. There was no other contract between the parties. Complainant furnished wire in coils each sufficient for 1,000 operations of the machine, and in the price charged included a royalty or license fee for the use of the machine for the 1,000 operations. *Held*, that the contract was in effect a license, revocable at will on completion of the number of operations for which the license fee had been paid, and that

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on its revocation by complainant the further use of the machine by defendant constituted an infringement of the patents. *Elliott Machine Co. v. Center*, 227 F., 126. 5—941

78. Same—The Clayton Law is Applicable to a Continuing Contract, Although Made Before Its Passage.—The Clayton Law, which makes it unlawful to lease or sell machinery, etc., on any condition or agreement which will tend to prevent the lessee or purchaser from dealing with competitors, is applicable to a continuing contract of lease, although made before its passage. *Ib.* 5—942

79. Same—All Persons Entering Into Contracts Affecting Interstate Commerce Must Do so Subject to Right of Congress to Regulate.—All persons entering into contracts involving interstate commerce must do so subject to the right of Congress thereafter to control, regulate, or prohibit the performance thereof. *Ib.* 5—942

80. Same—Contract Lawful When Made, May Be Avoided by Subsequent Legislation Making It Unlawful.—A contract to do a thing, lawful when made, may be avoided by subsequent legislation making it unlawful, and an act of Congress may affect contracts or rights which had their inception before its passage. *Ib.* 5—942

81. Manufacturer of Motion Picture Projecting Machine Can Not, by Contract, Require Purchaser or Lessee Thereof to Use Films Manufactured by It, Its Patent for Films Having Expired.—Under the Clayton Law making it unlawful to lease or sell goods, machinery, or supplies on a condition that the lessee or purchaser shall not use or deal in the goods, machinery, or supplies of a competitor of the lessor or seller, where such condition may subsequently lessen competition and create a monopoly, complainant, who by virtue of patents had a monopoly for the manufacture of motion-picture projecting machines, can not, in selling or leasing such machines, require the purchaser to use films manufactured by it, its letters patent for films having expired, and such a contract is invalid, as tending to create a monopoly. *Motion Picture Pat. Co. v. Universal Film Co.*, 235 F., 400. 6—843

82. Same—The Clayton Law Applies to Contracts Made Before Its Passage.—The Clayton Law, leveled at monopolies, applies to contracts entered into before its enactment. *Ib.* 6—844

83. Same—The Clayton Law is applicable, Though Acts of Restraint Occurred in State in which Contract Was Made.—Where a contract involved and restrained interstate commerce, the Clayton Law is applicable, though the particular acts of restraint and infringement occurred in the State of New York, where the contract was made. *Ib.* 6—844

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- 84. Same—Lessee of a Machine Sold by the Manufacturer to a Third Person Not Bound by Conditions Imposed by Patentee.**—Where the holder of a patent for motion-picture projecting machines required one licensed to manufacture to impose conditions as to the use of films in the machines, in violation of the Clayton Law, one who leased a machine sold by the manufacturer to a third person is not bound to observe such conditions, on the theory that a license can not be relied on and its terms repudiated. *Ib.* 6—645
- 85. A Contract by Which a Manufacturer, on Selling Machines to a Dealer, Attempts to Fix the Resale Price Thereof to Purchasers, Is Illegal and Unenforceable.**—Complainant manufactures automobiles under its own patents, and sells the same to dealers, receiving therefor the prices it has fixed; but by contracts with such dealers it is provided that the machines will be resold by them at complainant's full advertised list prices only, and that a violation of such provision shall constitute an infringement of that patent, subject the dealer to the payment of a fixed sum as damages and authorize a cancellation of the contract; also that title to the particular machine or machines so sold shall revert to complainant. There is a further provision reserving title in complainant until full payment of the purchase price. *Held*, that such a contract is one of sale of the machines, and not of the right to sell, that on full payment of the purchase price of a machine it passes beyond the patent monopoly, and that in so far as the contract attempts to fix the price at which only it may be sold thereafter it is illegal, as in restraint of trade and unenforceable. *Ford Motor Co. v. Union Motor Sales Co.*, 225 F., 382. 6—196
- 86. When Agent May, by Direct Covenant, Bind Himself to Observe Price Restriction.**—An agent or vendee of a patentee may, by direct covenant, bind himself to the observance of price restriction imposed as a condition on which exclusive right of sale by the patentee is being exercised. *American Graphophone Co. v. Boston Store*, 225 F., 789. 6—844
- 87. In regard to Use of Patent, if Reasonable, not in Violation of Sherman Law.**—Although a contract in regard to the use of a patent may include interstate commerce and restrain interstate trade, if it involves only the reasonable and legal conditions imposed under the patent law, it is not within the prohibitions of the Sherman Law. *Bement v. National Harrow Co.*, 186 U. S., 70; *Henry v. A. B. Dick Co.*, 224 U. S., 30. 6—758
- 88. Of Absolute Sale, in which Attempt is Made to Control Resale Price, Invalid at Common Law and under the Sherman Law.**—At least subject to limitations, a system of contracts between a manufacturer and retail dealers, whereby it, in connection

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with absolute sales of its product, attempts to control the resale prices for all sales, by all dealers, is a restraint on trade, invalid both at common law and, so far as it affects interstate commerce, under the Sherman Law. *Ford Motor Co. v. Union Motor Sales Co.*, 244 F., 157. 6—1009

89. **Between Manufacturer and Agent, for Retention of Title to Article by Manufacturer, not Invalid.**—Stipulation in sales to retailers by the patentee manufacturer of automobiles by which it retains title till the cars have been resold to a user at a stipulated price is not invalid as between them, as against the public policy; the manufacturer not being in exclusive control of an article of commerce for which there is no substantial substitute, but controlling only one of many similar devices which may be purchased on the open market, and the contract, so far as appears, not interfering with the free play of wholesale competition. *Ford Motor Co. v. Boone et al.*, 244 F., 342. 6—1034

90. **Of Profit-Sharing, When Part of General Scheme to Prevent Competition, in Restraint of Trade.**—Profit-sharing contracts put in practice by a manufacturer of glucose and grape sugar, which at the time had practically a monopoly, by which 10 cents was set aside for each 100 pounds of product sold to a customer, and paid to him at the end of the following calendar year, provided he had not in the meantime purchased from any other producer, when adopted as part of a general scheme to prevent competition, are contracts in restraint of trade, in violation of the Sherman Law. *U. S. v. Corn Products Refining Co.*, 234 F., 979. 6—580

91. **Not Intrinsically Illegal Because Seller Agreed to Give Portion of Its Profits to Purchaser for Exclusively Dealing with Seller.**—The contract in this case *Held* not to be intrinsically illegal because the seller agreed to give a portion of its profits to the purchaser of goods provided the latter dealt exclusively with the former for a specified period and that the purchaser bought the goods exclusively for its own use; and also *Held* that such contract was not illegal under the Sherman Law. *Wilder Mfg. Co. v. Corn Products Ref. Co.*, 236 U. S., 172. 6—552

92. **Same—Purchaser of Goods from a Corporation Organized in Violation of the Sherman Law, not Entitled to Percentage in Profit-Sharing Scheme, Where He Did Not Comply with Terms of Contract.**—The purchaser of goods from a corporation organized in violation of the Sherman Law, is not entitled to his percentage in a proposed profit-sharing scheme devised by the corporation, where he did not comply with the condition upon which the offer of a right to a participation in the profits was rested, or the contract (if there was a contract to that effect) was based, *viz*, that he would for the

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following year deal exclusively with such corporation. *Id.*,
57 L. Ed., 520. 6—557

93. **By Corporation Constituting Another Corporation Its Exclusive Sales Agent, etc., Not Unlawful.**—A contract by which a corporation, manufacturing dairy supplies under various patents owned by it, and selling them throughout the United States, constituted another corporation its exclusive sales agent, and fixed the list price of its products, does not violate the prohibition of the Sherman Law against combinations in restraint of trade. *Virtue v. Creamery Package Mfg. Co.*, 57 L. Ed., 393. 4—830

94. **While One Contract May Be Innocent, It May Be a Step in a Criminal Plot.**—While no one of a number of contracts considered severally may be in restraint of trade, each of a series of innocent contracts may be a step in a concerted criminal plot to restrain interstate trade, and, if so, may thereupon become unlawful under the Sherman Law. *U. S. v. Reading Co.*, 226 U. S., 357. 4—725

95. **Which Are Attempts to Monopolize, and Which Restrain Trade, Are an Offense under Anti-Trust Laws.**—All contracts or acts which are theoretically attempts to monopolize, and which in practice have come to be considered as in restraint of trade in a broad sense, are an offense under the statute against monopolies; but contracts not unduly restraining commerce are not prohibited, the standard of reason being the measure used for the purpose of determining whether the particular act is prohibited by the statute. *U. S. v. Cowell*, 243 F., 732. 6—1006

IN RESTRAINT OF TRADE. See COMBINATIONS, ETC., 124-158.

NOT ENFORCEABLE. See COMBINATIONS, ETC., 70-74.

FREEDOM OF CONTRACT—RIGHT OF PRIVATE CONTRACT. See CONSTITUTION, 2-8; and CONGRESS, 5-7, 11, 19, 24.

CONTRACTS FOR ENTIRE PRODUCT. See COMBINATIONS, ETC., 285, 286.

AGREEMENTS NOT TO ENGAGE IN BUSINESS OR COMPETE. See COMBINATIONS, ETC., 280-282, 284, 301, 304-308.

CONTRACTS IN VIOLATION OF ANTI-TRUST ACT. See ACTIONS AND DEFENSES, 133, 134.

DEFENSES.—See ACTIONS AND DEFENSES.

CONTRIBUTORY INFRINGEMENT.

1. **Is Intentional Aiding of Infringement.**—Contributory infringing is the intentional aiding of one person by another in the unlawful making, selling or using of a patented invention. *Henry v. A. B. Dick Co.*, 224 U. S., 34. 6—761

2. **Same—What Constitutes.**—The sale of ink to a purchaser of a Rotary mimeograph sold with a license restriction that it could be used only with the ink supplied by the patentee, with the expectation that the ink sold would be used in con-

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nection with such mimeograph, constitutes contributory infringement of the patent. *Ib.*, 56 L. Ed., 645. 6—774

COPYRIGHT.

The rights acquired by publishers of copyrighted books under the copyright law did not justify them in combining and agreeing that their books should be subject to the rules laid down by the united owners, one of which was that no member of the association should sell any books to a black-listed purchaser who was known to cut prices. *Mines v. Scribner*, 147 F., 927. 2—1035

See also COMBINATIONS, ETC., 86, 182—184.

CORNER.

1. Definition of "Corner."—A "corner" is the securing of such control of the immediate supply of any product as to enable those operating the corner to arbitrarily advance the price of the product. It is ordinarily created by operations on boards of trade or stock exchanges, and by dealings in options and futures. *U. S. v. Patten*, 187 F., 668. 4—280
2. Same—Corner Not Combination in Restraint of Trade.—While a corner is illegal because it is a combination which arbitrarily controls the prices of a commodity, it can not be called a combination in restraint of competition, since the going up of the price incident to the creation of a corner necessarily increases competition. *Ib.* 4—281
3. Same—Running a Corner.—Since the operation of a scheme to corner the cotton market and thereby raise the price of cotton for the purpose of compelling a settlement by short speculators at an abnormally high price does not directly affect or restrain interstate commerce, there being no direct relation between prices and such commerce, an indictment alleging a conspiracy to run a cotton corner without any alleged intent to obstruct interstate commerce did not charge a violation of the Sherman Law. *Ib.* 4—284
4. Individual Ownership Not a Monopoly.—An indictment against operators of a cotton corner for alleged violation of the Sherman Law charged that defendants had conspired to monopolize a part of the trade and commerce among the several States by becoming members of and engaging in an unlawful combination in the form of an agreement by which they were severally to purchase cotton to such an extent that, together, they would have enough to enable them to control the price of such cotton, and severally to demand arbitrary, excessive, and monopolistic prices for the same on the sale thereof by them, respectively, to spinners and manufacturers other than such conspirators. *Held*, that, since no monopoly exists when individuals, each acting for himself, own large quantities of a commodity, the indictment was fatally defective as alleging only a scheme to demand

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monopolistic prices as the result of individual as distinguished from collective power. *Ib.* 4—286

CORPORATIONS.

1. A corporation, while by fiction of law recognized for some purposes as a person and for purposes of jurisdiction as a citizen, is not endowed with the inalienable rights of a natural person, but it is an artificial person, created and existing only for the convenient transaction of business. *Northern Securities Co. v. United States*, 193 U. S., 197 (Brewer concurring). 2—341
2. Stockholding—Corporations to Acquire Stock of Competing Railroads—Legality.—The real control of a corporation is in its stockholders, who have the power to determine all important corporate acts and policies, and any contract or combination by which a majority of the stock of two railroad companies owning and operating parallel and competing interstate lines of road is transferred to a corporation organized for the purpose of holding and voting the same, and receiving the dividends thereon, to be divided pro rata among the stockholders of the two companies so transferring their stock, directly and substantially, restricts interstate trade and commerce, and is in violation of the Sherman Law, since it destroys any motive for competition between the two roads; and it is immaterial that each company has its own board of directors, which nominally directs its operations and fixes its rates. *U. S. v. Northern Securities Co.*, 120 F., 721. 2—215
3. Same.—The fact that the purpose of an illegal combination between stockholders of two railroad companies operating parallel and competing interstate lines, to secure unity of interest and control of such companies, and to prevent competition, has been accomplished by the formation of a corporation which has acquired the ownership of a majority of the stock of each of the companies, can not be urged to defeat a suit by the United States to restrain the exercise of the power so illegally acquired by the corporation through such combination, as imposing a restraint upon interstate commerce in violation of the Sherman Law. *Ib.* 2—223
Affirmed, 193 U. S., 197 (2—338).
4. Powers of Corporations—New Jersey Statutes.—The language of the New Jersey enabling act (Laws 1899, p. 473), authorizing the organization of corporations "for any lawful purpose," imposes a limitation upon the powers of any corporation organized thereunder, however broad may be the terms of its articles of incorporation. *Ib.* 2—224
5. Northern Securities Company—Distribution of Stock—Purchase and Sale.—A contract by which defendant, the Northern Securities Company, acquired from complainants certain shares of stock of the Northern Pacific Railway Company (193 U. S.,

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197), *Held*, under the evidence, to have been one of purchase and sale, by which defendant, on payment of the agreed price, became the absolute owner of the shares, free from any trust in favor of the complainants, and free to distribute the same pro rata among all its stockholders upon the entry of a decree declaring it to be an illegal combination, and prohibiting it from voting or receiving dividends on such stock. *Northern Securities Co. v. Harriman*, 134 F., 331.

2—618

Affirmed, 197 U. S., 244 (2—669).

6. Same.—Should Not Be Enjoined from Distributing Stock.—Defendant corporation having been adjudged an illegal combination in restraint of interstate commerce, and enjoined from voting or receiving dividends on certain railroad stock which it owned, but permitted to transfer the same to its stockholders, a plan adopted by its directors and stockholders to distribute the same pro rata among all its stockholders was equitable, and its execution should not be enjoined. *Ib.*

2—629

7. Same.—The decree of the Circuit Court in the Northern Securities case, affirmed by this court (193 U. S., 197), did not determine the quality of the transfer as between the defendants, and the provisions therein as to return of shares of stock transferred to it by the railway stockholders were permissive only, and not an adjudication that any of the vendors were entitled to a restitution of their original railway shares. *Harriman v. Northern Securities Co.*, 197 U. S., 244.

2—669

8. Same.—The judgment of the Supreme Court in the Northern Securities case went no further than the decree of the Circuit Court itself, and while it leaves that court at liberty to proceed in the execution of its decree as circumstances may require, it does not operate to change the decree or import a power to do so not otherwise possessed. *Ib.*

2—710

9. Same.—The judgment or opinion of the Supreme Court in this case did not enlarge the scope of the decree of the Circuit Court so as to make it an adjudication that any of the vendors of railway stocks were entitled to judicial restitution of the stocks transferred by them to the Securities Company, or that the Securities Company could not distribute the shares of railway stock held by it *pro rata* between its own shareholders. *Ib.*

2—710

10. Same.—The transaction between complainants and the Northern Securities Company was one of purchase and sale of Northern Pacific Railway Company stock for shares of stock of the Securities Company and cash and not a bailment or trust. *Ib.*

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11. Same—Duty of Securities Company to Distribute Stock.—It was the duty of the Securities Company under the decree in the Government suit to end a situation which had been adjudged unlawful, and as this could be effected by sale and distribution in cash, or by distribution in kind, the company was justified in adopting the latter method and avoiding the forced sale of several hundred million dollars of stock which would have involved disastrous results. *Ib.* 2—716
12. Unreasonable Search and Seizure of Contracts and Correspondence—Immunity—Grand Jury.—A corporation charged with a violation of the Sherman Law is entitled to immunity under the fourth amendment of the Constitution from such an unreasonable search and seizure as the compulsory production before a grand jury, under a *subpoena duces tecum*, of all understandings, contracts, or correspondence between such corporation and six other companies, together with all reports and accounts rendered by such companies from the date of the organization of the corporation, as well as all letters received by that corporation since its organization, from more than one dozen different companies, situated in seven different States. *Hale v. Henkel*, 201 U. S., 43. 2—874
13. Same.—A corporation is but an association of individuals with a distinct name and legal entity, and in organizing itself as a collective body it waives no appropriate constitutional immunities, and although it can not refuse to produce its books and papers it is entitled to immunity under the fourth amendment against unreasonable searches and seizures, and where an examination of its books is not authorized by an act of Congress a subpoena duces tecum requiring the production of practically all of its books and papers is as indefensible as a search warrant would be if couched in similar terms. *Ib.* 2—902
14. Same.—The protection against unreasonable searches and seizures afforded by the fourth amendment can not ordinarily be invoked to justify the refusal of an officer of a corporation to produce its books and papers in obedience to a *subpoena duces tecum*, issued in aid of an investigation by a grand jury of an alleged violation of the Sherman Law, by such corporation. *Ib.* 2—904
15. Same—Contempt.—Although the subpoena duces tecum may be too broad in its requisition, where the witness has refused to answer any question, or to produce any books or papers, this objection would not go to the validity of the order committing him for contempt. *Ib.* 2—904
16. Same—Reserved Right to Investigate Contracts of a Corporation.—A corporation is a creature of the State, and there is a reserved right in the legislature to investigate its contracts and find out whether it has exceeded its powers. *Ib.* 2—905

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17. Same.—There is a clear distinction between an individual and a corporation, and the latter, being a creature of the State, has not the constitutional right to refuse to submit its books and papers for an examination at the suit of the State.
Ib. 2—905
18. Same.—An officer of a corporation which is charged with criminal violation of a statute can not plead the criminality of the corporation as a refusal to produce its books. *Ib.* 2—905
19. Franchises of a corporation chartered by a State are, so far as they involve questions of interstate commerce, exercised in subordination to the power of Congress to regulate such commerce; and while Congress may not have general visitatorial power over State corporations, its powers in vindication of its own laws are the same as if the corporation had been created by an act of Congress. *Ib.* 2—906
20. In an action against corporations for violations of the Sherman Law, the books of the various defendants both before and after the alleged combination, and the contracts between them, as well as other papers, referred to in the opinion, are all matters of material proof, but whether material or not the testimony must be taken and exceptions can be noted by the examiner and the materiality of the evidence passed on by the court. *Nelson v. United States*, 201 U. S., 92. 2—920
21. Corporate Officers—Production of Documentary Evidence.—The refusal of corporate officers to obey orders of a Federal circuit court requiring them to produce certain documentary evidence, on their examination before a special examiner, can not be justified on the theory that such evidence was not in their possession or under their control, because their possession was not personal, but was that of the corporations. *Ib.* 2—943
22. Same.—Documentary evidence in the shape of books and papers of corporations are in the possession of the officers thereof. *Ib.* 2—944
23. Same—Officers and Employees Can Not Refuse to Testify or Produce Books, etc.—*Hale v. Henkel* (vol. 2, p. 874) followed, to the effect that officers and employees of corporations can not, under the fourth and fifth amendments, refuse to testify or produce books of corporations in suits against the corporations for violations of the Sherman Law, in view of the immunity given by the act of February 25, 1903. *Ib.* 2—944
24. Corporation Can Not Claim Immunity Because of Testimony or Evidence Furnished by Its Officers.—A corporation, whether State or Federal, can not claim immunity from prosecution for violation of the interstate commerce or anti-trust laws of the United States because of testimony given or evidence produced by its officers or agents before the Interstate Commerce Commission or the Commissioner of Corporations, or in any

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- proceeding, suit, or prosecution under such laws; the right to immunity on account of evidence so given in the several cases granted by act February 11, 1893 (27 Stat., 443), and acts February 14 and February 25, 1903 (32 Stat., 827, 904), being limited to individuals who as witnesses give testimony or produce evidence. *United States v. Armour & Co.*, 142 F., 808. 2—951
25. Article IV of the Constitution of the United States has nothing to do with the conduct of individuals or corporations. It only prescribes a rule by which courts, Federal and State, are to be guided when a question arises in the progress of a pending suit as to the faith and credit to be given by the court to the public acts, records, and judicial proceedings of a State other than that in which the court is sitting. *Minnesota v. Northern Securities Co.*, 194 U. S., 48. 2—533
26. Corporation Not Rendered Unlawful Because a Majority of the Stock is Owned by Another Corporation Which Is Itself Unlawful.—A corporation engaged in selling tobacco products at retail is not rendered unlawful by the fact that a majority of its stock is owned by another corporation which is itself an unlawful combination in restraint of interstate commerce and which sells to the retailing corporation the larger part of its goods, where the latter conducts its business independently in a lawful manner and sells also goods of other manufacturers. Nor does it constitute an "unlawful monopoly" in violation of Sherman Law, because it operates in the several States 400 retail stores out of 600,000 places where tobacco is sold. *U. S. v. American Tobacco Co.*, 164 F., 710. 3—441
27. Authority to Hold Stock in Other Corporations—Burden of Proof.—When a corporation asserts that it is clothed with a given power, such as the power to acquire and hold stock in another corporation, the burden rests upon it to show whence such power and right are derived. *Mannington v. C., H. V. & T. Ry. Co.*, 183 F., 149. 3—849
28. Foreign Corporations—Exercise of Charter Powers—Rule of Comity.—In Ohio, as in other States and Territories, in harmony with the general rule of comity, the presumption is indulged that a corporation of a foreign State, not forbidden by the law of its being, may exercise within the State the general powers conferred by its own charter, unless it is prohibited from so doing either in the direct legislative enactments of the State, or by its public policy as deduced from the general course of legislation, or from the settled adjudications of its highest court. *Ib.* 3—862
29. Railroads—Purchase of Stock of Other Companies—Ohio Statute.—The amendment of May 6, 1902, to Rev. St. Ohio, section 3256 (95 Ohio Laws, p. 390), now section 8603, Gen.

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Code, which provides that "private corporations may purchase or otherwise acquire and hold shares of stock in other kindred but not competing corporations, whether domestic or foreign, but this shall not authorize the formation of any trust or combination for the purpose of restricting trade or competition," applies to railroad corporations, such provisions and those of Rev. St. Ohio, section 3300 (Gen. Code, secs. 8806, 8807, 8809), which specifically authorize railroad companies to subscribe for stock in other companies under certain conditions, being cumulative. *Ib.* 3—858

30. **Misconduct of Directors.**—Directors and others conspiring to obtain action by the directors against the interests of the corporation for wrongful and ulterior purposes are liable to the corporation for the damages caused thereby. *Penna. Sugar Ref. Co. v. American Sugar Ref. Co.*, 166 F., 261. 3—562

31. **Wrongful Acts of Directors—Effects as to Corporations.**—Action of directors in the name of their corporation, detrimental to its interests and in bad faith, is, with respect to them, the act of the corporation in name only. *Ib.* 3—562

32. **Same.**—A corporation can not conspire that its own directors shall be unfaithful to it. *Ib.* 3—562

33. **Criminal Responsibility in Conspiracy.**—A corporation may be liable criminally for the crime of conspiracy. *U. S. v. MacAndrews & Forbes Co.*, 149 F., 835 3—98

34. **Guilt of Corporation Not Imputed to Stockholder.**—A violation of a law by a corporation does not render its non-participating stockholders criminally liable therefor. *Union Pacific Coal Co. v. U. S.*, 173 F., 739. 3—734

35. **Directors—Wrongful Acts of Majority—Corporation in Pari Delicto.**—Where defendants obtained control of plaintiff corporation for the purpose of ruining it and to prevent plaintiff from ever becoming a competitor, and carried out such unlawful purpose by vote of a majority of plaintiff's stock that plaintiff should cease business against the protest of the minority stockholders, the corporation and defendants were not *in pari delicto*. *Penna. Sugar Ref. Co. v. American Sugar Ref. Co.*, 166 F., 261. 3—562

37. **Powers of Corporations—Implied Power to Lease.**—Where a strictly private corporation finds it can not profitably continue operations, and such financial exigencies exist as render such action necessary or appropriate, it may lawfully make a lease of its entire property for a term of years, although no express authority to lease is contained in the articles of incorporation. *Anderson v. Shawnee Compress Co.*, 87 Pac. Rep., 316. 3—127

38. **Authority of Board of Directors to Determine Business Policy.**—While directors of a private business corporation may not act

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oppressively, fraudulently, or in such a manner as to destroy the corporate existence, or contrary to law or the purposes for which the corporation was organized, and may not dissipate its assets or secure private advantage at corporate expense, they are nevertheless the governing body, representing both the majority and minority stockholders, and as such possess a wide discretion in determining its business policies and the methods of executing them, which a stockholder can not control or have revised by an appeal to the courts. *Post v. Bucks Stove & Range Co.*, 200 F., 920. 4—805

39. **Same.—Authority of Directors to Settle Litigation—Rights of Objecting Stockholders.**—A controversy having arisen between a corporation engaged in manufacturing stoves and its employees, who were members of a labor organization, the union employees quit, and the labor organization inaugurated an extensive boycott against the corporation and its products, whereupon suit was instituted for an injunction against the labor organization and its leaders, and, an order directed the issuance of a modified injunction having been sustained by the Circuit Court of Appeals, both parties appealed to the Supreme Court, pending which a settlement was arrived at, whereby the corporation released its right to sue for treble damages under section 7 of the Sherman Law, on the ground that the labor organization constituted an unlawful combination in restraint of trade and commerce, to which settlement complainant, a minority stockholder, objected. *Held*, that such settlement was within the jurisdiction of the corporation's board of directors in the ordinary management of the corporation's affairs, and, having been entered into in good faith, was binding on such minority stockholder notwithstanding his protest, and he was therefore not entitled thereafter to maintain a suit for such damages for the benefit of the corporation. *Ib.* 4—807

40. **Is Not Inherently a Monopoly, Where for 10 Years Its Increase in Percentage of Business Is Less Than That of Its Competitors.**—A corporation, although a combination of other large manufacturing corporations and having a very large capital, can not be said to be inherently a monopoly, where during 10 years its increase in percentage of business is much less than that of its principal competitors. (Per Woolley, Circuit Judge, concurring.) *U. S. v. U. S. Steel Corporation*, 223 F., 163. 6—163

41. **Same—If Not in and of Itself a Monopoly or Combination, Should Not Be Dissolved Where Unlawful Acts Have Been Discontinued.**—A corporation which is not in and of itself a monopoly nor a combination in restraint of trade, within the meaning of the Sherman Law, should not be dissolved because it may in the past have combined with others to

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- restrain trade by controlling prices, where such unlawful acts have been discontinued. *Ib.* 6—182
42. Director of, When Not Responsible for Illegality of Its Organization.—The fact alone that a corporation after its organization paid for property purchased with stock and then elected the seller as a member of its board of directors does not render him responsible for any alleged illegality in its organization. *Ib.* 6—161
43. Responsible for Acts of Subsidiary Corporation, the Stock of Which It Owns.—Where one corporation owns all of the stock of another and controls its policy and business, it is responsible for the acts of the subsidiary corporation, which are considered in equity as its own acts. *U. S. v. United Shoe Mach. Co.*, 234 F., 141. 5—813
44. Right of Stockholder to Sue on Behalf, under Sherman Law, Limited by General Principles.—The established principles limiting the right of a stockholder to sue on behalf of the corporation when it refuses to do so, restated and held applicable to an action for damages based on alleged injury to the corporation through violations of the Sherman Law. *United Copper Sec. Co. v. Amalgamated Copper Co.*, 244 U. S., 264. 6—950
45. Same—Right of Stockholder to Sue on Behalf of, Limited to Equitable Forum, in Suit under Sherman Law.—The rule which confines the individual stockholder to the equitable forum when seeking to enforce a right of the corporation applies when the cause of action arises under the Sherman Law, as in other cases. *Fleitmann v. Welsbach Co.*, 240 U. S., 27, distinguished. *Ib.* 6—951
46. Has No Right to Practice Law in New York, But May Prosecute Action for Benefit of Another.—Section 280 of the Penal Laws of New York (1909, c. 88), which prohibits any corporation from practicing law, does not make it unlawful for a corporation to prosecute an action for the benefit of another at its own expense, employing members of the bar to conduct the case. *Irving v. Neal et al.*, 209 F., 475. 5—391
47. Dissolution of, Equivalent to Death.—The dissolution of a corporation is equivalent to the death of a natural person. *Imperial Film Exchange v. General Film Co.*, 244 F., 986. 6—1045

COPYRIGHT.

Of Dramatizations Cover Photoplays of Same Subject.—Copyrights of dramatizations cover photoplay representations of the same subject. *U. S. v. Motion Picture Patents Co.*, 225 F., 803. 6—208

COSTS.

1. The discretion of the trial court under section 7 of the Sherman Law, to allow a reasonable attorney's fee to the successful

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plaintiff in an action brought under that section to recover damages for a violation of the provisions of that act against combinations in restraint of trade is not abused by an allowance of \$750, although the verdict was but for \$500, where the trial took five days, and from the proof offered it appeared that from \$750 to \$1,000 would be a reasonable sum. *Montague v. Lowry*, 193 U. S., 38. 2—329

2. **Costs—When Awarded Against All Defendants.**—Where some of a large number of defendants to a bill in equity demurred to the bill and from a decree dismissing it the complainant appealed and other of the defendants entered their appearance in this court and were heard in support of the decree, this court, in reversing the decree, awarded costs against all of the defendants appearing in this court. *Leonard v. Abner-Drury Brewing Co.*, 25 App. (D. C.) Cases, 161. 3—18

COUNTERCLAIM.

Legal Demand Can Not Be Pleaded as, in an Equity Suit.—A legal demand can not be pleaded as a set-off or counterclaim in an equity suit, but under new equity rule 30, it must be a demand "which might be the subject of an independent suit in equity." *Motion Picture Patents Co. v. Eclair Film Co.*, 208 F., 418. 5—346

COURTS.

I. FEDERAL COURTS IN GENERAL—JURISDICTION AND POWER.

1. **Jurisdiction Over Non-Resident Defendants in Private Suits.**—The authority given by section 5 of the Sherman Law, to bring in non-residents of the district can not be availed of in private suits, and the court can not acquire jurisdiction over them. *Greer, Mills & Co. v. Stoller*, 77 F., 1. 1—620
2. **Power to Bring in Non-Resident Defendants.**—Where one of the defendants in a suit, brought by the Government in a circuit court of the United States under the authority of section 4 of the Sherman Law is within the district, the court, under the authority of section 5 of that act, can take jurisdiction and order notice to be served upon the non-resident defendants. *Standard Oil Co. v. U. S.*, 221 U. S., 46. 4—118
3. **Jurisdiction in Private Suits Against a State for Violation of Sherman Law—Necessary Parties.**—Where a person brings an action under section 7 of the Sherman Law against the officials of a State to recover damages for acts done under authority of a State statute which gives the State an entire monopoly of the traffic in intoxicating liquors (act S. C., Jan. 2, 1895), the State itself is a necessary party thereto, and consequently the Federal courts would have no jurisdiction of the action. *Lowenstein v. Evans*, 69 F., 908. 1—598
4. **Court of Equity Can Not Entertain Bill of Private Party to Enforce Sherman Law.**—The Sherman Law does not authorize a court of equity to entertain a bill by a private party

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to enforce its provisions, his remedy being by an action at law for damages. *Southern Ind. Exp. Co. v. U. S. Exp. Co.*, 88 F., 659. 1—862

[But see section 16 of the Clayton Law.]

5. Court of Equity—No Jurisdiction to Restrain Violation at Suit of Private Party.—An agreement or combination in violation of the Sherman Law can not be declared null and void in equity at the suit of retail dealers engaged in purchasing and selling the product of a company sought to be compelled to join such association, but having no contract with it for the purchase of such product. Such a result can only be accomplished at the suit of the United States. *Leonard v. Abner-Drury Brewing Co.*, 25 App. (D. C.) Cases, 161. 3—14

6. But Injunction Will Lie at Suit of Party Injured When Damages Are Irreparable.—But where such retail dealers show that they have established a profitable business in selling the product of the company so sought to be coerced which is unwilling to advance the price of the product, but wishes to continue to sell to them at the lower price, but, intimidated by the threats of the association, such company is about to yield to its demands, and will do so unless restrained, in which event there will be an advance in prices, and such dealers may thereupon be allotted as customers to some other member of the trust against their will and be unable to purchase the product they have been dealing in even at the advanced price and their business will be destroyed—an injunction will lie at their suit to prevent the doing or continuing of the wrongful acts, the remedy at law, if any, even under the statute giving threefold damages, being inadequate, and consequential damages, such as loss of trade and profits and failure of credit and business, not being ordinarily recoverable at law. *Ib.* 3—16

7. The United States can not maintain a bill in equity to restrain an association of railroads from carrying into effect an agreement alleged to be illegal under the Interstate Commerce Law when it appears that it did not grant the charter of and has no proprietary interest in any of the roads. Its right is to prosecute for breaches of the law, not to provide remedies. *U. S. v. Joint Traffic Assn.*, 76 F., 895. 1—815
Case reversed, 171 U. S., 505 (1—869).

8. Jurisdiction After Admission of Territory as State.—In 1895 the plaintiff in error was indicted, with others, in a district court of the Territory of Utah under section 3 of the Sherman Law, which declares illegal "every * * * combination * * * in restraint of trade or commerce in any Territory." In January, 1896, Utah was admitted as a State, and thereafter the case was transferred to the Fed-

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eral court for the district of Utah, where, after hearing on demurrer to the indictment, the plaintiff in error was tried and convicted. *Held*, on writ of error, that neither under the act of Congress authorizing Utah to form a State government (28 Stat., 111, 112) nor the constitution of Utah (art. 24, sec. 7), nor by other legislation, was jurisdiction conferred upon the Federal court to proceed with the case. *Moore v. U. S.*, 85 F., 465. 1—815

9. *Same.*—*Held*, further, that the case did not come within the provisions of Revised Statutes, section 13, regulating the effect of the repeal of statutes, for the admission of Utah as a State did not operate to repeal the Sherman Law, which still applies to the Territories of the United States. *Ib.* 1—823

10. Court of Equity—Adjustment of Difficulties Between Receiver of Railroad and Employees.—Where the property of a railway or other corporation is being administered by a receiver under the superintending power of a court of equity, it is competent for the court to adjust difficulties between the receiver and his employees, which, in the absence of such adjustment, would tend to injure the property and to defeat the purpose of the receivership. *Waterhouse v. Comer*, 55 F., 153. 1—124

11. *Same.*—It follows, then, that it is in the power of the court, in the interest of public order and for the protection of the property under its control, to direct a suitable arrangement with its employees or officers, to provide compensation and conditions of their employment, and to avoid, if possible, an interruption of their labor and duty, which will be disastrous to the trust and injurious to the public. *Ib.* 1—125

12. A Court of Equity Should Not Aid by Entertaining Infringement Suits Brought by an Illegal Corporation.—A corporation organized for the purpose of securing assignments of all patents relating to "spring-tooth harrows," to grant licenses to the assignors to use the patents upon payment of a royalty, to fix and regulate the price at which such harrows shall be sold, and to take charge of all litigation, and prosecute all infringements of such patents, is an illegal combination whose purposes are contrary to public policy and which a court of equity should not aid by entertaining infringement suits brought in pursuance thereof. *National Harrow Co. v. Quick.*, 67 F., 130. 1—443

13. Jurisdiction of a Court of Equity Can Not Be Invoked to Enforce a Contract Arising Out of an Unlawful Combination of Railroads—Ticket Brokers.—In a suit by a railroad company to enjoin the defendants, who were ticket brokers, from dealing in special tickets issued by complainant on account of the Pan-American Exposition, which were by their terms

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non-transferable, it appeared from the showing made on a motion for a preliminary injunction that complainant was a member of a combination known as the "Trunk Line Association," formed by a number of railroads operating in different States for the purpose of preventing competition; that the passenger receipts of all such roads were pooled and divided on an agreed basis; and that the special rates made on account of the exposition were fixed, and the terms of the tickets which were the basis of the suit were prescribed by such association through its passenger committee. *Held*, That such combination was illegal, as in violation of the Sherman Law, and that complainant could not invoke the aid of a Federal court of equity for the protection of rights claimed under contracts which were the direct result and evidence of such unlawful combination. *Delaware, L. & W. R. Co. v. Frank*, 110 F., 689. 2—82

14. A railroad company belonging to an illegal combination in violation of the Sherman Law can not invoke the aid of a Federal court of equity for the protection of its rights claimed under contracts which were the direct result and evidence of such unlawful combination. *Ib.* 2—92

15. Will Enjoin a Combination Between Two Parallel and Competing Lines of Railroad—Question of Public Policy.—Where the effect of a combination is to directly prevent competition between two parallel and naturally competing lines of railroad engaged in interstate business, it is in restraint of interstate commerce and a violation of the Sherman Law, and the court, in a suit to enjoin it as such, can not consider the question whether the combination may not be of greater benefit to the public than competition would be; that being a question of public policy to be determined by Congress. *U. S. v. Northern Securities Co.*, 120 F., 721. 2—216

16. May Restrain Violations of Sherman Law and Frame Its Decree to Accomplish Practical Results.—Although cases should not be brought within a statute containing criminal provisions that are not clearly embraced by it the court should not by narrow, technical, or forced construction of words exclude cases from it that are obviously within its provisions, and, while the Sherman Law contains criminal provisions, the Federal court has power under section 4 of the act in a suit in equity to prevent and restrain violations of the act and may mold its decree so as to accomplish practical results such as law and justice demand. *Northern Securities Co. v. United States*, 193 U. S., 197. 2—339

17. Court Will Not Lend Its Aid in Enforcing Illegal Contract.—The court can not lend its aid in any way to a party seek-

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ing to realize the fruits of an illegal contract, and, while this may at times result in relieving a purchaser from paying for what he has had, public policy demands that the court deny its aid to carry out illegal contracts without regard to individual interests or knowledge of the parties. *Continental Wall Paper Co. v. Voight*, 212 U. S., 262. 3—513

18. Same—Effect of Refusal.—The refusal of judicial aid to enforce illegal contracts tends to reduce such transactions. *Ib.* 3—514

19. Nature of Relief to Be Granted.—Where an existing combination in corporate form has been adjudged unlawful, as in violation of the Sherman Law, and to have monopolized and to be monopolizing a large part of the interstate trade in a particular commodity it is the duty of the court, under the power conferred by section 4 of the act to "prevent and restrain" its violation, not only to enjoin further violation of the act, but to render its decree effective by dissolving the illegal combination. *U. S. v. du Pont, etc., Co.*, 188 F., 153. 4—377

20. When Ordinary Jurisdiction of Equity Not Impaired.—The fact that the Sherman Law makes a conspiracy in restraint of trade a crime, and provides a penalty therefor, does not necessarily impair the ordinary jurisdiction of equity, where the criminal acts work irreparable injury to property. The statute does not substitute its remedy for others which existed before its enactment. *Ib.* 3—17

21. Same.—*Quere.*—Whether if the wrongs complained of by an individual, growing out of alleged acts in restraint of trade in the District of Columbia, as distinguished from acts relating to conspiracies in restraint of interstate commerce, should be remediless save by a resort to the Sherman Law, any party other than the United States can invoke the jurisdiction of equity to restrain their commission. *Ib.* 3—17

22. Courts of Equity—Power to Compel Production of Books and Papers.—A court of equity has power to compel the production of books and papers by virtue of its inherent and general jurisdiction and this power is not confined to the parties to the suit, but extends to third persons. *U. S. v. Terminal R. Ass'n, etc.*, 148 F., 488. 3—38

23. Will Not Review Competency of Evidence Before Grand Jury on Motion to Quash.—Except in States having statutes on the subject, courts will not review the evidence received by a grand jury on a motion to quash, for the purpose of passing on its competency. *U. S. v. Swift*, 186 F., 1018. 4—76

24. Jurisdiction of Federal Courts.—A suit based on an alleged violation of Sherman Law whereby direct and special injuries are inflicted on and threatened to the complainants is one arising under a law of the United States of which a

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Federal court has jurisdiction regardless of the citizenship of the parties. *Mannington v. C., H. V. & T. Ry. Co.*, 183 F., 140. 3—835

25. **Suit Involving Rights of Stockholders.**—Where it is claimed that one corporation can not under the statute lawfully own the stock of another a court can not, in a suit to which such stockholding corporation is not a party, adjudge the constitution of the board of directors of the corporation issuing the stock illegal on the ground that certain of its stock was held and voted at the corporate election by such stockholding corporation. *Ib.* 3—847
26. **Acts of Foreign Government.**—Where Costa Rica was de facto sovereign over that part of Panama, including the McConnell concession, at the time plaintiff's plantation and railroad in such concession was injured by the acts of the Costa Rican soldiers and officers acting under governmental authority, such acts were immune from investigation or review by the courts of the United States. *American Banana Co. v. United Fruit Co.*, 166 F., 266. 3—570
27. **District in Which Suit Must Be Brought.**—An action against a corporation in a Federal court for a common-law tort can be maintained only in the district of plaintiff's residence or that in which defendant is incorporated, and such requirement can not be avoided by joining in the same complaint another count stating an entirely separate cause of action of which the court has jurisdiction nor by stating a joint cause of action against such defendant and another which is an inhabitant of the district and may be there sued, the cause of action being several as well as joint. *Ware-Kramer Tobacco Co. v. American Tobacco Co.*, 178 F., 120. 3—770
28. **The question whether a suit in a Federal court is maintainable in the district where brought, under the statute, may be raised either by motion to set aside the service of process or by special demurrer, where a special appearance is made for that purpose only, and before pleading to the merits; but the right is waived by filing a general demurrer or pleading to the merits.** *Ib.* 3—770
29. **Congressional Power to Authorize Their Process to Run Outside Their District.**—In a case at law or in equity which arises under the Constitution or laws of the United States, and a suit by the United States under the Sherman Law, presents such a case, Congress is authorized by article 3, §§ 1, 2, of the Constitution to confer upon any national court jurisdiction to summon the proper parties to the suit to a hearing and decree wherever they reside or are found within the dominion of the Nation, although beyond the limits of the district of the court. *U. S. v. Standard Oil Co.*, 152 F., 293. 3—178

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- 30. District Where Suit to Be Brought—Restriction to Inhabitants of District Inapplicable Where Jurisdiction Conferred by Special Acts.**—The inhibition of section 1 of the judiciary acts of 1887 and 1888 (act Mar. 3, 1887, c. 373, 24 Stat., 552, and act Aug. 13, 1888, c. 866, 25 Stat., 433) that "no suit shall be brought before either of said courts [the circuit and district courts] against any person by any original process or proceeding in any other district than that whereof he is an inhabitant," is ineffective and inapplicable in instances in which exclusive jurisdiction over particular cases or classes of cases has been conferred upon the Federal court by special acts of Congress. *Ib.* 3—178
- 31. A case can not, under existing statutes regulating the jurisdiction of the courts of the United States, be removed from a State court, as one arising under the Constitution or laws of the United States unless the plaintiff's complaint, bill, or declaration shows it to be a case of that character.** *Minnesota v. Northern Securities Co.*, 194 U. S., 64. 2—548
- 32. While an allegation in a complaint filed in a circuit court of the United States may confer jurisdiction to determine whether the case is of the class of which the court may properly take cognizance for purposes of a final decree on the merits, if notwithstanding such allegation, the court finds, at any time, that the case does not really and substantially involve a dispute or controversy within its jurisdiction then, by the express command of the act of 1875, its duty is to proceed no further. And if the suit, as discussed by the complaint could not have been brought by plaintiff originally in the circuit court, then, under the act of 1887-88 it should not have been removed from the State court and should be remanded.** *Ib.* 2—549
- 33. A State can not, by a suit in its own name, invoke the original jurisdiction of a Federal circuit court to restrain and prevent violations by competing interstate railway companies, of the Sherman Law, because, alone, of the alleged remote and indirect injury to its proprietary interests arising from the mere absence of free competition in trade and commerce as carried on by such carriers within its limits.** *Ib.* 2—553
- 34. Article IV of the Constitution of the United States only prescribes a rule by which courts, Federal and State, are to be guided when a question arises—in the progress of a pending suit as to the faith and credit to be given by the court to the public acts, records, and judicial proceedings of a State, other than that in which the court is sitting. It has nothing to do with the conduct of individuals or corporations.** *Ib.* 2—554
- 35. Allegation of Amount in Controversy.**—It is not essential that a bill in a Federal court should state the amount or value in

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controversy, if it appears to be within the jurisdictional limit, from the allegations of the bill, or otherwise from the record, or from evidence taken in the case before the hearing of objections to the jurisdiction. *Robinson v. Suburban Brick Co.*, 127 F., 804. 2—312

36. Abatement—Pendency of Action in State Court.—The pendency of a suit in a State court is not a bar to one on the same cause of action in a Federal court. *Ib.* 2—318

37. Production of Documents.—The search and seizure clause of the Fourth Amendment was not intended to interfere with the power of courts to compel the production upon a trial of documentary evidence through a *subpœna duces tecum*. *Hale v. Henkel*, 201 U. S., 43. 2—874

See also SEARCH, and WITNESSES.

38. Orders of a Federal circuit court directing witnesses to answer the questions put to them and produce written evidence in their possession on their examination before a special examiner appointed in a suit brought by the United States to enjoin an alleged violation of the Sherman Law, is interlocutory in the principal suit, and therefore not appealable to the Supreme Court. An appeal does lie, however, from a judgment of contempt, attempting to enforce the order. *Alexander v. United States*, 201 U. S., 117. 2—945

See also *Nelson v. United States*, 201 U. S., 92 (2—920).

39. Admission of Evidence—Order of Proof.—In an action to recover damages for an alleged conspiracy in restraint of interstate commerce, it was within the discretion of the trial court to admit evidence of acts and declarations of various of the defendant associations, their officers, committees, members, and agents, made in the absence of many of the other defendants, before a *prima facie* case of conspiracy had been established, and before privity of some of the defendants had been proven, on condition that such connecting evidence should be thereafter given. *Loder v. Jayne*, 142 F., 1010. 2—977

40. In Determining Questions Arising under the Anti-Trust Acts the Federal Courts Will Exercise an Independent Judgment, Unaffected by Decisions of State Courts.—Congress having undertaken by the Anti-Trust Acts to deal with monopolies affecting interstate commerce, and having conferred jurisdiction of questions arising thereunder on the Federal courts, in determining such questions those courts exercise an independent judgment, unaffected by the decisions of the courts of the State. *Skaggs v. Kansas City Term. Ry. Co.*, 283 F., 829. 6—536

41. Same—Only the Decisions of the Highest Court of a State Are Binding on the Federal Courts.—It is only the highest court

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- of a State whose decisions construing the State constitution or statutes are binding on the Federal courts. *Ib.* 6—538
42. **When They Will Not Follow State Practice.**—Under the conformity statute (Rev. St., § 914), a Federal court will follow the practice prescribed by a State statute "as near as may be," but not where it would defeat or incumber the administration of the law under Federal statutes. *Buckeye Powder Co. v. Du Pont Powder Co.*, 196 F., 516. 4—563
43. **Will Not Resort to Technicalities in Criminal Cases, But Will Look to Ultimate Justice Upon the Merits.**—At the present time the reasons which formerly impelled courts to resort to technicalities in criminal cases to avoid the infliction of unjustly severe penalties have ceased to exist, and the effort now on the part of the judges is to overlook technicalities so far as possible, and to administer the law from a broad viewpoint, looking to ultimate justice upon the merits. *U. S. v. Patterson et al.*, 201 F., 720. 5—35
44. **Protective Powers Extend to Every Device Whereby Property is Damaged or Commerce Restrained.**—The court's protective powers extend to every device whereby property is irreparably damaged or interstate commerce restrained; otherwise the Sherman Law would be rendered impotent. *Gompers v. Bucks Stove & Range Co.*, 221 U. S., 438. 4—780
45. **Same—Society Itself is an Organization, and Does Not Object to Organizations for Social, Religious, Business, and all Other Legal Purposes.**—Society itself is an organization and does not object to organizations for social, religious, business, and all other legal purposes. *Ib.* 4—780
46. **Same—Duty of to Protect Against Unlawfully Exercising of Power.**—On appeal against unlawfully exercising power of organizations it is the duty of government to protect the one against the many as well as the many against the one. *Ib.* 4—780
47. **Same—May Enjoin Continuance of Boycott, Although Spoken Words Were Used in Making It Effective.**—A court of equity may enjoin the continuance of a boycott, although spoken words or written matter were used as one of the instrumentalities by which the boycott was made effective. *Ib.*, 57 L. Ed., 797. 4—779
48. **Can Restrain Discriminations in Interchange of Traffic by One Railroad Constructed under Acts of Congress Against Another.**—Doubtless courts could restrain one railroad constructed under the acts of July 1, 1862, and July 2, 1864, from making discriminations, contrary to the provisions of those acts in regard to interchange of traffic, against another railroad also constructed under those acts. *U. S. v. Union Pacific R. R. Co.*, 226 U. S., 92. 4—681

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- 49. Have Jurisdiction of Suits by Subscribers, to Compel Telephone Service, Although Parties May Be Friendly Antagonists.**—Judicial Code, section 37, authorizing the dismissal of a suit in the Federal court if it should appear that it does not properly involve a dispute within the jurisdiction of the court, or that parties have been collusively made or joined for the purpose of giving the court jurisdiction, does not deprive the Federal court of jurisdiction over a suit by the subscribers of an interstate telephone company whose employees were on a strike, to compel the company to furnish service it had contracted to furnish, though the parties thereto were friendly antagonists, and the telephone company was willing to have the controversy submitted to the Federal court, since the collusion which deprives the court of jurisdiction is not an agreement between the parties that an existing dispute cognizable in the Federal courts shall be brought there, but an agreement so to adjust the situation as to clothe the court with an apparent jurisdiction which it otherwise would not have. *Stephens v. Ohio State Telephone Co.*, 240 Fed., 765.
6—929
- 50. Same—Have Jurisdiction of Telephone Company's Business, as Interstate Agent.**—Under act June 18, 1910, section 7, 36 Statutes, 544, amending Interstate Commerce Act February 4, 1887, section 1, 24 Statutes, 379, so as to make it apply to telephone, telegraph, and cable companies engaged in sending messages from one State, Territory, or district to another or to a foreign country, which companies shall be common carriers within the act, the Federal courts have the same jurisdiction relating to a telephone company's duties as an interstate agency that they have relating to railroads and other interstate carriers. *Ib.*
6—931
- 51. Reviewing Will Regard Contract in True Light, Where Trial Court Compelled Plaintiff to Proceed on Wrong Theory.**—Where, in an action on contracts claimed to violate the State Anti-Trust Laws, plaintiff sued on the contracts as contracts of consignment, but by the court's ruling that they were contracts of sale was compelled to proceed as if they were contracts of sale, this enforced change of attitude did not preclude an appellate court from regarding the contracts in their true light as contracts of consignment. *Cole Motor Car Co., v. Hurst*, 228 F., 282.
6—388
- 52. Same—Where Contract Open to Two Reasonable Constructions Court Will Adopt Interpretation Sustaining Claim for Balance Due on Contract.**—If contracts between a manufacturer of motor cars and a dealer, claimed to violate the Anti-Trust Laws of the State, were open to two reasonable interpretations, one defeating the manufacturer's claim for a balance due and the

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- other enforcing it, the court would be at liberty to adopt the latter interpretation. *Ib.* 6—388
53. May not refuse to enforce an otherwise legal contract because it might afford some indirect benefit to a wrongdoer. *Wilder Mfg. Co. v. Corn Products Ref. Co.*, 236 U. S., 172. 6—552
54. Will Not Investigate, on Application of Receiver to Renounce a Contract for Terminal Facilities, Whether Property Was Acquired in Violation of the Sherman Law.—The receivers of an insolvent railroad company applied for leave to disaffirm and renounce a contract whereby the corporation had leased terminal facilities from the appellant, on the ground that the contract was burdensome to the company, it having acquired its own terminal facilities for those places. The contract was one not binding on the receivers until assumed under the direction of the court. The insolvent company had acquired its own terminal facilities some 14 years before the application. *Held* that, as the matter was one of business expediency, the court would not investigate, on the ground that the receivers did not come into court with clean hands, the question whether the property was acquired in violation of the Sherman Law. *Kansas City Southern Ry. Co. v. Lusk*, 224 F., 705. 5—880
55. Same—The Court Does Not, by Taking Possession and Operating Through a Receiver, an Insolvent Railroad, Violate the Anti-Trust Laws, Although Some of the Property Was Acquired in Violation of Such Laws.—Where a railroad system becomes insolvent, the court does not, by taking possession of the property through its receiver and operating it, violate the anti-trust laws of the State or Federal Government, though the insolvent corporation acquired some of its mileage in violation of such laws. *Ib.* 5—881
56. Will Not Review Conduct of Common Carriers under Interstate Commerce Act, Until Question Passed on by Interstate Commerce Commission.—The purpose of the Interstate Commerce Act is to establish a tribunal to determine the relation of communities, shippers and carriers, and their respective rights and obligations dependent upon the act, and the conduct of carriers is not subject to judicial review in criminal or civil cases based on alleged violations of the act until submitted to and passed on by the commission. *U. S. v. Pacific & Arctic R. & N. Co.*, 228 U. S., 107. 5—233
57. Same—Quære, as to the effect of a finding by the Interstate Commerce Commission in such a case. *Ib.* 5—232
58. Power of, to Grant Relief—Distinction Between Failure to Construct, and Eliminating Existing Competing Railroad.—There is a clear distinction between the power to grant relief respecting the past failure to construct one of two projected parallel lines of railroad and the power to prevent the elim-

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ination of one of two parallel roads in actual existence and operation. *U. S. v. L. S. & M. S. Ry. Co. et al.*, 203 F., 817.

5—273

59. **Can Not Declare Patent Monopoly Unwise.**—Courts can not declare the monopoly created by Congress under authority of the Constitution to be unwise; Congress alone has the power to prescribe what restraints shall be imposed. *Henry v. A. B. Dick Co.*, 224 U. S., 35.

6—763

60. **Same—Test of Jurisdiction Under Patent Laws.**—The test of jurisdiction is whether complainant does or does not set up a right, title, or interest under the patent laws or make it appear that a right or privilege will be defeated by one, or sustained by another, construction of those laws. *Ib.*

6—746

61. **Will Not Adjudicate Extent of Restraint, if It Be Substantial.**—The court will not adjudicate in mathematical terms the extent of the restraint, if the evidence shows that it is substantial. *U. S. v. Hollis* (not reported).

6—995

62. **Have Jurisdiction Where Property Threatened Exceeds \$3,000 in Value.**—Where the property which strikers were threatening to destroy far exceeded \$3,000 in value, and there was the requisite diversity of citizenship, the Federal court had jurisdiction, though less than \$3,000 worth of property had been already destroyed. *Tri-City Trades Council v. American Steel Foundries*, 238 F., 730.

6—915

63. **Federal Will Not Compel Production of Documents by Officer of Government, in Private Suit.**—A Federal court will not entertain process, in a suit between private parties, to compel the production before an examiner, by an officer of an Executive Department of the Government, of papers coming into his possession as such officer in the discharge of his official duties. *Great Eastern Clay Products Co.* (not reported).

6—1042

64. **Power of, to Substitute as Plaintiffs Receivers of Corporations, When Writ of Error Pending.**—Whether or not, in an action by stockholders to enforce an alleged right of their corporation this court has power to substitute as plaintiffs persons appointed receivers of the corporation while the writ of error is pending. *Held*, that in the circumstances stated in the opinion such a motion was without merit in this case. *United Copper Sec. Co. v. Amalgamated Copper Co.*, 244 U. S., 266.

6—952

65. **Suit by a Minority Stockholder of a Railroad to Enjoin Consolidation, Within General Equity Jurisdiction of Federal Court.**—A suit by a minority stockholder of a railroad company to restrain the majority stockholders from effecting a consolidation with another company on the ground that it will be illegal as in violation of the Sherman Law, is not one brought under the provisions of such act, but one invoking a remedy

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which existed before its passage, and is within the general equity jurisdiction of a Federal court. *De Koven v. L. S. & M. S. Ry Co.*, 216 F., 958. 5—474

66. **Continuance of Trial of Action Within Discretion of Trial Judge.**—The trial court did not abuse its discretion in denying a motion by defendants in a civil suit brought by the Government under the Sherman Law for an enlargement of time to take testimony, based upon the ground that they had been prevented by the action of the Government in instituting criminal proceedings from properly presenting their defense, in that the Government apprehending that the witnesses for the defense were called to give them immunity from the criminal prosecution then pending, notified them that if they testified they would do so at their peril, as immunity could only be claimed by witnesses for the Government, whereupon, on the advice of counsel, they refused to testify, leaving the defendants without the benefit of the evidence which they could have given. *Standard Sanitary Mfg. Co. v. U. S.*, 57 L. Ed., 107. 4—651

67. **Will Not Dissolve Combination Unless Necessary to Prevent Continuance of Evil Effects of Past Undue Restraint or Monopoly.**—The purpose of a suit in equity by the United States to prevent and restrain violations of the Sherman Law, brought under section 4 of the act, is to restrain and prevent future violations through the power of injunction; but where the evil effects of past undue restraint or monopoly of trade continue to be effective and harmful, and if to prevent continuance of such wrongs a dissolution of the unlawful combination is necessary to make the relief effective, the court has power to decree such dissolution; but, unless so necessary, such power will not be exercised. *U. S. v. U. S. Steel Corporation*, 223 F., 59. 6—8

68. **Will Not Do Injustice in Violation of Legal Principles, etc.**—While courts will not refrain from declaring and applying legal principles, because peculiar hardships will result in isolated instances, they are not to be persuaded consciously to do injustice in violation of those principles. *Elliott Machine Co. v. Center*, 227 F., 127. 5—942

II. DISTRICT COURTS.

69. **District Courts to Hear Cases Under Expedition Act.**—The new district court created by the Judicial Code of 1911 is the successor of the formerly existing circuit court and as such is vested with the duty of hearing and disposing of cases under the Expedition Act of 1903. *Ex parte U. S., Petitioner*, 228 U. S., 424. 4—511

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- 70. Power Conferred by Judicial Code.**—Section 291 of the Judicial Code expressly confers the powers of the circuit court upon the now existing district courts. *Ib.* 4—511
- 71. Power of Single Judge to Enter Decree in Expedited Suit.**—Where the Supreme Court reversed a decree dismissing a suit to enforce the Sherman Law, and remanded the case with specific directions, the decree on the mandate may be entered by any district judge presiding, or circuit judge assigned to the court, under the Judicial Code, § 18, notwithstanding the Expedition Act of February 11, 1903, requiring the assignment for the hearing of actions involving the Sherman Law before not less than three judges; the word "hearing" meaning a trial requiring judicial determination. *U. S. v. Terminal R. R. Ass'n*, 197 F., 449. 4—505
Reversed, 226 U. S., 420 (4—507).
- 72. Order of, Requiring Plaintiff to Elect Cause on Which It Will Rely, Not Reviewable, Where All Evidence Not in Record.**—The action of the trial court in requiring plaintiff, suing for damages under section 7 of the Sherman Law, for violations of sections 1 and 2 of the law to elect on which violation it will rely, is not reviewable, where all the evidence is not in the record. *Buckeye Powder Co. v. Du Pont Powder Co.*, 223 F., 886. 4—604
- 73. Same—Where Recovery Sought for Violations of Different Sections of Sherman Act, Court May Require Plaintiff to Elect on Which Section It Will Rely.**—Where the declaration, in an action for damages under section 7 of the Sherman Law, sought a recovery for violations of sections 1 and 2 of the law, the court was justified in requiring plaintiff to elect on which section it would rely. *Ib.* 4—604
- 74. Same—When Order of, Requiring Election, is Harmless Error.**—Where, in an action for damages under section 7 of the Sherman Law, plaintiff's case depended on the truth of the charge to which practically all the evidence was directed, that defendants had unlawfully attempted to monopolize a large part of the trade in an article of commerce, and the case was tried on the merits, the rule requiring plaintiff to elect whether he would rely on a violation of section 1 or of section 2 was harmless. *Ib.* 4—605
- 75. May Allow New Cause of Action to Be Set Up in Complaint.**—The trial court in its sound discretion may allow a new cause of action to be set up by amendment of the complaint. *Thomsen v. Caysar*, 243 U. S., 89. 6—730
- 76. Same—Where Indictment is Held Insufficient as to Certain Defendants, the District Court Construes the Indictment and Not the Act, Which Decision the Supreme Court is Without Power to Review.**—Where the District Court holds that the averments of the indictment are not sufficient to connect certain defend-

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ants with the offense charged, it construes the indictment and not the statute on which it is based, and the Supreme Court has no jurisdiction under the Criminal Appeals Act to review the decision. *U. S. v. Pacific & Arctic R. & N. Co.*, 228 U. S., 108. 5—233

See also CIRCUIT COURTS.

III. CIRCUIT COURTS.

77. Jurisdiction to Restrain and Punish Violations of Sherman Law.—The circuit courts have jurisdiction under the Sherman Law to issue injunctions to restrain and punish violations of that act. *U. S. v. Agler*, 62 F., 824. 1—294

78. Jurisdiction—Habeas Corpus—Removal of Prisoner.—Where a prisoner, arrested under warrant based upon an indictment in a distant State and district, is held pending an application to the district court for a warrant of removal for trial, the circuit court of the district in which he is held has authority on *habeas corpus* to examine such indictment and to release the prisoner if in its judgment the indictment should be quashed on demurrer. *In re Terrell*, 51 F., 213. 1—46

79. Habeas Corpus—Removal of Prisoner—Examination of Indictment.—It is the right and duty of the circuit court on an application for *habeas corpus* for the purpose of releasing a person held under a warrant of a United States commissioner to await an order of the district judge for his removal to another district to answer an indictment, to examine the indictment to ascertain whether it charges any offense against the United States, or whether the offense comes within the jurisdiction of the court in which the indictment is pending. *In re Greene*, 52 F., 104. 1—54

80. Jurisdiction—Obstruction of the Mails.—The circuit court had power to issue its process of injunction upon complaint which clearly showed an existing obstruction of artificial highways for the passage of interstate commerce and the transmission of the mails, not only temporarily existing, but threatening to continue. *In re Debs*, 158 U. S., 565. 1—535

81. Same—Violation of Injunction—Contempt.—Such an injunction having been issued and served upon the defendants, the circuit court had authority to inquire whether its orders had been disobeyed, and when it found that they had been disobeyed to proceed under Revised Statutes, section 725, and to enter the order of punishment complained of. *Ib.* 1—598

82. Same—Habeas Corpus.—The circuit court having full jurisdiction in the premises, its findings as to the act of disobedience are not open to review on *habeas corpus* in this or any other court. *Ib.* 1—598

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83. The circuit court has power in an action brought by the Attorney General to enjoin the Northern Securities Company, a corporation organized to hold the majority of the stock of two competing and parallel lines of railroad for the purpose of preventing competition, from voting such stock, and from exercising any control whatever over the acts and doings of the railroad companies in question, and also to enjoin them from paying any dividends to the holding corporation on any of the stock so held by it. *Northern Securities Co. v. United States*, 193 U. S., 197. 2—338
84. The circuit court can have no jurisdiction of a suit instituted by a State, because of an allegation in the complaint that full faith and credit will not be given to its public acts if a New Jersey corporation organized for the purpose of acquiring the control of two competing interstate railway companies engaged in business within its limits is allowed to carry out the object of its incorporation. *Minnesota v. Northern Securities Co.*, 194 U. S., 48. 2—533
85. The jurisdiction of the circuit court to entertain a suit to enjoin a combination of persons from interfering with and preventing shipowners from shipping a crew may be maintained on the ground of preventing a multiplicity of suits at law, and for the reason that damages at law for interrupting the business and intercepting the profits of pending enterprises and voyages must, in their nature, be conjectural and not susceptible of proof. 54 Fed. Rep., 40, affirmed. *Blindell v. Hagan*, 56 F., 606. 1—182
86. The jurisdiction of the circuit court over a bill in equity to enjoin a railroad company from granting rebates to favored shippers can not be maintained upon the ground that such act of the railroad company is a monopoly within the meaning of section 2 of the Sherman Law. *United States v. Atchison, T. & S. F. Ry. Co.*, 142 F., 176. 2—831
87. The pendency of a suit in a State court can not be pleaded in abatement of an action in a circuit court of the United States to recover treble damages under section 7 of the Sherman Law, since the State court is without jurisdiction to enforce the remedy given by said section, and therefore the same case can not be depending in both courts. *Loewe v. Lawlor*, 130 F., 633. 2—563
88. Appeal to Supreme Court.—Where there are allegations of diverse citizenship in the bill, but the jurisdiction of the circuit court is also invoked on constitutional grounds, the case is appealable directly to the Supreme Court under section 5 of the act of March 3, 1891, as one involving the construction or application of the Constitution of the United States, and where both parties have appealed the entire case comes to this court, and the respondent's appeal does not

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have to go to the Circuit Court of Appeals. *Field v. Barber Asphalt Paving Co.*, 194 U. S., 618. 2—555

See also DISTRICT COURTS.

IV. CIRCUIT COURTS OF APPEALS.

89. The Circuit Court of Appeals will not reverse an interlocutory order granting or continuing a temporary injunction unless it is clearly shown that the same was improvidently granted and is hurtful to the appellant. *Workmen's Amalg. Council v. U. S.*, 57 F., 85. 1—184
90. Jurisdiction of Circuit Court of Appeals.—The question of the jurisdiction of a circuit court, when not the sole question determined, is reviewable by the Circuit Court of Appeals under act March 3, 1891, c. 517, § 6, 26 Stat., 828, on a writ of error bringing up the whole case. *Meeker v. Lehigh Valley R. R. Co.*, 183 F., 552. 3—974
91. May Not Review Verdict on Disputed Facts or Weight of Evidence.—The United States Circuit Court of Appeals may not determine whether a verdict is in accord with the weight of the evidence, or review the verdict on any disputed fact, but may only inquire whether assignments of error, properly taken, disclose any material mistake in the trial. *Buckeye Powder Co. v. Du Pont Powder Co.*, 223 F., 884. 4—602
92. Appellate Will Not Weigh Evidence.—It is not the province of an appellate court to weigh the evidence. *Patterson v. U. S.*, 222 F., 630. 5—121

V. THE SUPREME COURT.

93. Jurisdiction—Appeal—Dissolution of Illegal Association.—The dissolution of the freight association does not prevent this court from taking cognizance of the appeal and deciding the case on its merits; as where parties have entered into an illegal agreement and are acting under it, and there is no adequate remedy at law, and the jurisdiction of the court has attached by the filing of a bill to restrain such or like action under a similar agreement, and a trial has been had and judgment entered, the appellate jurisdiction of this court is not ousted by a simple dissolution of the association effected subsequently to the entry of judgment in the suit. *U. S. v. Trans-Mo. Ft. Assn.*, 166 U. S., 290. 1—648
94. Same.—While the statutory amount must as a matter of fact be in controversy, yet the fact that it is so need not appear in the bill, but may be shown to the satisfaction of the court. *Id.* 1—865
95. Jurisdiction—Appeal—Refusal of Witness to Answer Questions in Anti-Trust Investigation—Fifth Amendment.—In a suit in the Circuit Court of the United States brought by the

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United States against corporations for violations of the Sherman Law, a witness refused to answer questions or submit books to inspection before an examiner appointed by the court on the ground of immateriality, also pleading the Fifth Amendment; after the court had overruled the objections and directed him to answer he again refused and judgment in contempt was entered against him. On appeal to the Supreme Court. *Held*, That questions under the Constitution of the United States were involved and the court has jurisdiction of an appeal direct from the circuit court. *Nelson v. United States*, 201 U. S., 92. 2—920

96. *Same*.—In such an action the books of the various defendants, both before and after the alleged combination, and the contracts between them, as well as other papers referred to in the opinion, are all matters of material proof, but whether material or not the testimony must be taken and exceptions can be noted by the examiner and the materiality of the evidence passed on by the court. *Ib*. 2—942

97. Jurisdiction—The Order of a Judge of the Circuit Court to a Witness to Answer or Be Punished for Contempt is Interlocutory and Not Appealable to Supreme Court.—In a suit in a circuit court of the United States brought by the United States against corporations for violations of the Sherman Law, a witness refused to answer questions or produce books before the examiner on the ground of immateriality, also pleading the privileges of the Fifth Amendment; the court overruled the objections and ordered the witness to answer the questions and produce the books; an appeal was taken to this court. *Held*, That while such an order might leave the witness no alternative except to obey or be punished for contempt it is interlocutory in the principal suit and not a final order, nor does it constitute a practically independent proceeding amounting to a final judgment, and an appeal will not lie therefrom to this court. *Alexander v. United States*, 201 U. S., 117. 2—945

98. *Same*.—But an Appeal from a Judgment of Contempt is Reviewable.—If the witness refuses to obey and the court goes further and punishes him for contempt there is a right of review, and this is adequate for his protection without unduly impeding the process of the case. [*See also Nelson v. United States*, 201 U. S., 92 (2—920).] *Ib*. 2—951

99. The jurisdiction of the Supreme Court of the United States on writ of error to a circuit court, under the circuit court of appeals act, when the constitutionality of a State statute is in question, extends to all cases in which such a question is decided against the claim of either party, and therefore includes a case in which the writ of error is taken by a defendant who set up in defense of the action a statute which

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- the court held unconstitutional. *Connolly v. Union Sewer Pipe Co.*, 184 U. S., 54. 2—118
100. *Same.*—If a claim is made in the circuit court that a State enactment is invalid under the Constitution of the United States, and that claim is sustained or rejected, the Supreme Court may review the judgment at the instance of the unsuccessful party. *Ib.* 2—124
101. *Consent of Parties Can Never Confer Jurisdiction upon a Federal Court.*—If the record does not affirmatively show jurisdiction in the circuit court, the Supreme Court must, upon its own motion, so declare, and make such order as will prevent the circuit court from exercising an authority not conferred upon it by statute. *Minnesota v. Northern Securities Co.*, 194 U. S., 48. 2—533
102. *The findings of fact made in a State court in a suit in equity are conclusive upon the Supreme Court of the United States on writ of error to that court.* *Bement v. National Harrow Co.*, 186 U. S., 70, 83. 2—169, 181
103. *Certiorari.*—Where the decree of the Circuit Court of Appeals in an action in equity only reverses an order of the circuit court granting an injunction, but the court, the record presenting the whole case, practically disposes of the entire controversy on the merits, certiorari may issue from the Supreme Court, and that court may finally dispose of it by its direction to the circuit court. *Harriman v. Northern Securities Co.*, 197 U. S., 244. 2—669
104. *Jurisdiction on Certiorari.*—After the Circuit Court of Appeals has certified questions to this court and this court has issued its writ of certiorari requiring the whole record to be sent up, it devolves upon this court under § 6 of the judiciary act of 1891 to decide the whole matter in controversy in the same manner as if it had been brought here for review by writ of error or appeal. *Loewe v. Lawlor*, 208 U. S., 284. 3—333
105. *Reviewing Power of Supreme Court.*—Where the Supreme Court of the Territory of Oklahoma reverses the judgment of the trial court the reviewing power of this court is limited to determining whether there was evidence supporting the findings and whether the facts found were adequate to sustain the legal conclusions. *Shawnee Compress Co. v. Anderson*, 209 U. S., 430. 3—364
106. *Same.*—In this case the Supreme Court of the Territory having found that a lease, being made to further an unlawful enterprise, was void as an unreasonable restraint of trade and as against public policy, this court sustains the judgment, there being proof supporting the conclusions to the effect that the lessor company agreed to go out of the field of competition, not to enter that field again, and to render

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- every assistance to prevent others from entering it—other acts in aid of a scheme of monopoly also being proved. *Ib.* 3—365
- 107. Same.—It is not necessary to determine whether the supreme court of the Territory based its judgment declaring such a lease void on the common law, the Sherman law, or the statutes of the Territory. The restraint placed upon the lessor was greater than the protection of the lessee required. *Ib.* 3—367
- 109. A State is not a citizen within the meaning of the provisions of the Constitution or acts of Congress regulating the jurisdiction of the Federal courts. *Minnesota v. Northern Securities Co.*, 194 U. S., 63. 2—546
- 110. Disposition of Cause on Reversal on Appeal or Error.—Where counsel in the trial of a cause and the court in its charge to the jury proceeded on an erroneous construction of the statute on which the action was based, an appellate court will not undertake to determine the case on the evidence in the record, but will remand for a new trial. *Union Castle Mail S. S. Co. v. Thomsen*, 190 F., 536. 4—384
- 111. Same—When Supreme Court Will Not Overrule Decisions of Lower courts.—Where a great majority of the courts to which Congress has committed the interpretation of a law have construed it, so that the line of decisions has become a rule of property, the Supreme Court should not, in the absence of clear reason to the contrary, overrule those decisions on certiorari, and so held in this case after reviewing the decisions sustaining the rule of contributory infringement. *Henry v. A. B. Dick Co.*, 224 U. S., 36. 6—763
- 112. Will Not Refrain from Ruling on Question, Because it Might Draw to Federal Courts Cases.—The Supreme Court of the United States will not refrain from ruling that a patentee may sell a patented machine subject to restrictions as to its use, and predicate infringement on a use in violation of such restrictions, on the ground that such a ruling might draw to the Federal courts cases which otherwise would not come to them. *Ib.*, 56 L. Ed., 645. 6—744
- 113. Does Not Prescribe Jurisdiction of Courts.—The Supreme Court does not prescribe the jurisdiction of courts, Federal or State, but only gives effect to it as fixed by law. *Ib.*, 224 U. S., 13. 6—743
- 114. Same—Supreme Court Never Shirks Responsibility of Maintaining Lines of Separation.—In determining questions of jurisdiction the Supreme Court never shirks the responsibility of maintaining the lines of separation defined in the Constitution and the laws made in pursuance thereof. *Ib.* 6—744
- 115. Supreme Court Has No Power to Review, under Criminal Appeals Act, Construction Given Indictment by Lower Court.—

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The District Court's construction of an indictment must be accepted by the Supreme Court when reviewing, under the Criminal Appeals Act of 1907, a judgment sustaining a demurrer to certain counts in the indictment, which is based upon the construction of the Federal statute upon which the indictment is founded. *U. S. v. Winslow*, 227 U. S., 202; 57 L. Ed., 481. 5—212

116. **May Grant Writ of Certiorari to Review a Judgment Punishing for Contempt.**—While the Supreme Court can not review by appeal or writ of error a judgment of the Court of Appeals of the District of Columbia punishing for contempt, it may grant a writ of certiorari to review the same. *Gompers v. U. S.*, 233 U. S., 606. 4—795
117. **May Hear Persons Interested, Not Parties, in Framing Decree.**—Even though persons seeking to intervene on the settlement of a decree were not parties and therefore can not intervene in the court below, they may be entitled to be heard in the Supreme Court concerning the decree in so far as it may operate prejudicially to their rights. *U. S. v. Terminal R. R. Ass'n*, 236 U. S., 199. 4—516
118. **Can Not Pass on Moot Questions.**—The Supreme Court can not pass upon questions which have, as an inevitable legal consequence of the European war now flagrant, become moot. *U. S. v. Hamburg-American Line*, 239 U. S., 475. 4—909
119. **Same—Will Take Judicial Notice of European War, and Its Consequence.**—The Supreme Court takes judicial notice of the European war and that its inevitable consequence has been to interrupt the steamship business between this country and Europe. *Ib.* 4—910
120. **Same—Will Not Establish a Rule for Controlling Predicted Future Conduct.**—It is a rule of the Supreme Court, based on fundamental principles of public policy, not to establish a rule for controlling predicted future conduct; and it will not decide a case, involving a combination alleged to be in violation of the Sherman Law, which has become moot as a legal consequence of war, because of probability of its being re-created on the cessation of war. *Ib.* 4—910
121. **Same—Power Can Not Be Enlarged in Moot Case by Stipulation of Parties.**—The power of the Supreme Court can not be enlarged or its duty affected in regard to the decision of a moot case by stipulation of parties or counsel. *Ib.* 4—910
122. **Will Reverse Judgment Against Government and Remand With Instruction to Dismiss, Where Case Has Become Moot.**—Where a case to dissolve a combination alleged to be illegal under the Sherman Law has become moot and the Supreme Court has thus been prevented from deciding it upon the merits, and the court below decided against the Government, the course most consonant with justice is to reverse, with direc-

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tions to dismiss the bill without prejudice to the Government in the future to assail any actual contract or combination deemed to offend the Sherman Law. *Ib.* 4—912

123. **When It Will Not Consider Contention Not Made in Lower Courts.**—A contention not made either in the Circuit Court or in the Circuit Court of Appeals, and which is contrary to the theory on which the cause was tried, will not be considered by the Supreme Court. *Virtue v. Creamery Package Mfg. Co.*, 57 L. Ed., 893. 4—835

COVENANTS. See COMBINATIONS, ETC., 301, 302, 304—306.

CREDIBILITY OF WITNESSES. See JURY, 2.

CRIMINAL LAW.

1. **A "Combination" and a "Monopoly" Not Identical Offenses.**—Where defendants were indicted in separate counts, one for combination and the other for monopoly, in violation of the Sherman Law, such offenses were not identical, but were legally distinct and justified separate punishment on conviction. *U. S. v. MacAndrews & Forbes Co.*, 149 F., 838. 3—102
2. **"Monopolizing" and "Attempting to Monopolize" Separate Offenses.**—Under the Sherman Law, which makes it a misdemeanor to "monopolize or attempt to monopolize * * * any part of the trade or commerce among the several States or with foreign nations," monopolizing and attempting to monopolize such commerce are separate offenses and can not be included in one count of an indictment. *U. S. v. American Naval-Stores Co.*, 186 F., 596. 4—53

DAMAGES.

1. **Damages Recoverable.**—Only actual damages, established by the proof of facts from which they may be rationally inferred with reasonable certainty, are recoverable under the Sherman Law. Speculative, remote, or contingent damages can not form the basis of a lawful judgment. *Central Coal & Coke Co. v. Hartman*, 111 F., 96. 2—94
2. **Same—Speculative Damages—Evidence—Sufficiency.**—The estimates, speculations, or conjectures of witnesses unfounded in the knowledge of actual facts from which the amount of the damages could have been inferred with reasonable certainty will no more sustain a judgment than the conjectures of a jury. *Ib.* 2—102
3. **Same—Anticipated Profits—When Recoverable.**—The general rule is that the anticipated profits of a commercial business are too remote, speculative, and dependent upon changing circumstances to warrant a judgment for their loss. There is an exception to this rule that the loss of profits from the interruption of an established business may be recovered where the plaintiff makes it reasonably certain by competent proof what the amount of his actual loss was. *Ib.* 2—97

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4. **Same—Profits of Established Business—Evidence—Indispensable to Recovery.**—Proof of the expenses and of the income of the business for a reasonable time anterior to and during the interruption charged, or of facts of equivalent import, is indispensable to a lawful judgment for damages for the loss of the anticipated profits of an established business. *Ib.* 2—98
5. **Same—Loss of Profits.**—The plaintiff testified that the acts of the defendants had greatly diminished his business, prevented him from making contracts for future delivery of coal, and diminished his sales from 15 to 20 carloads per month, on which he would have made a profit of from \$12 to \$20 per car; that he could not tell what the volume of his business was before or after the acts complained of, and that he had no books or papers which would show this fact. He produced no evidence of the expenses or income of his business before or after the acts complained of. *Held*, That the evidence was insufficient to sustain a verdict for damages for the loss of anticipated profits. *Ib.* 2—103
6. **Burden of Proof.**—In an action for damages for conspiracy in restraint of interstate commerce in violation of the Sherman Law, the burden was on plaintiff to show some real actual damage to his business by reason of the alleged unlawful combination. *Loder v. Jayne*, 142 F., 1010. 2—977
7. **Same—Compensation for Extra Work—Evidence.**—Where, in an action for damages to plaintiff's business because of an alleged conspiracy in restraint of interstate commerce, plaintiff claimed \$5,000 compensation to himself for extra work claimed to have been required by reason of such unlawful combination, but failed to prove how much additional time he was required to spend in his business after the combination went into effect, he was not entitled to recover for such alleged extra services. *Ib.* 2—989
8. **Same—Additional Capital.**—Where, in a suit for damages to plaintiff's business because of an alleged unlawful combination in restraint of interstate commerce, plaintiff claimed that because of such combination it was necessary to put \$10,000 extra capital into his business from rents of his building, which were collected from time to time, but he testified on cross-examination that the payments of interest and taxes on the building were in excess of the amount paid into the business, he was not entitled to recover interest on such alleged additional capital. *Ib.* 2—990
9. **Same—Increased Cost.**—Where, by reason of an unlawful combination in restraint of interstate commerce in violation of the Sherman Law, plaintiff was compelled to conduct his

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business at a greater cost, though it was greater in volume, and by reason of the injury he received a less percentage of return, he was entitled to recover such additional cost, though by reason of his increased efforts and the natural increase of his business he was enabled to withdraw from the business for his personal services an amount equal to, or larger than, he drew from the business before the conspiracy became operative. *Ib.* 2—992

10. The owner of goods may dictate the prices at which he will sell them, and the damages which are caused to an applicant to buy by the refusal of the owner to sell to him at prices which will enable him to resell them at a profit constitute no legal injury, and are not actionable, because they are not the result of any breach of duty or of contract by the owner. *Whitwell v. Continental Tobacco Co.*, 125 F., 454. 2—271
11. Party Injured May Recover Damages for Being Compelled to Pay Higher Price.—Where, as a result of conspiracy or combination in restraint of interstate commerce, prohibited by the Sherman Law, a person is injured by being compelled to pay a higher price for any article affected thereby than he would otherwise be compelled to pay, he may recover treble the amount of the damages sustained. *Monarch Tobacco Works v. American Tobacco Co.*, 165 F., 779. 3—542
12. Recoverable when Suffered Wholly within one State.—Where Congress has power to make acts illegal it can authorize a recovery for damages caused by those acts, although suffered wholly within the boundaries of one State. *Chatanooga Foundry & Pipe Works v. Atlanta*, 203 U. S., 397. 3—120
13. Same.—A person whose property is diminished by a payment of money wrongfully induced is injured in his property. *Ib.* 3—119
14. Same.—Although the sale may not have been so connected with the unlawful combination as to be unlawful, the motives and inducements to make it may be so affected by the combination as to constitute a wrong. *Ib.* 3—120
15. Whether Restraint Reasonable or Unreasonable Immaterial.—In an action to recover treble damages, caused by an unlawful combination in restraint of foreign commerce, in violation of the Sherman Law, whether the restraint of trade caused by the combination was reasonable or unreasonable, was immaterial. *Thomsen v. Union Castle Mail S. S. Co.*, 166 F., 253. 3—551
16. Same.—Where a combination in restraint of foreign commerce, in violation of the Sherman Law, was put in operation in the United States and affected her foreign commerce, it was

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- not material to a suit by a person injured thereby that it was formed in a foreign country. *Ib.* 3—551
17. **Same.**—Where a combination in restraint of foreign commerce was continuing, it was not material to plaintiff's right to recover treble damages sustained thereby under the Sherman Law, whether the combination was entered into before or after plaintiffs commenced business, it being equally unlawful to prevent a person from engaging in business as to drive a person out of business. *Ib.* 3—551
18. **Right to Rebate not an Item of Damages under the Sherman Law.**—Foreign ship-owners formed a combination abroad to organize and control steamship business between New York and South African ports, after which plaintiffs, who had never before been engaged in South African trade, began to ship goods to such ports, and in common with other patrons of defendant's vessels, became entitled to rebates under a circular issued by defendants in case plaintiffs did not patronize competing vessels, which they afterwards did, whereupon defendants refused to pay further rebates. *Held*, that plaintiff's rights to such rebates, if any, was not an item of damage that proximately grew out of the combination of ship-owners, and hence plaintiffs were not entitled to recover the same under the Sherman Law, authorizing a recovery of treble damages accruing through an unlawful combination in restraint of interstate and foreign commerce. *Thomson v. Union Castle Mail S. S. Co.*, 149 F., 935. 3—112
19. **Which Accrue after Suit Brought, for Acts Previously Committed, may be Recovered in Action for Fraudulent Conspiracy.**—In an action for fraudulent conspiracy in restraint of interstate commerce in violation of the Sherman Law, evidence showing damages which accrued after suit brought because of acts previously committed was properly admitted. *Lawlor v. Loewe*, 200 F., 728. 5—410
20. **Verdict for, may Include those Accruing after Suit Brought, as a Consequence of Acts Previously Committed.**—A verdict for damages resulting from an illegal combination in restraint of interstate trade under the Sherman Law, may include those accruing after commencement of the suit, but as the consequence of acts done before and constituting part of the cause of action declared on. *Lawlor v. Loewe*, 235 U. S., 536. 5—424
21. **Only those Suffered Before Date of Filing Suit, Recoverable in Action for Tortious Injury.**—In an action for damages for tortious injury, where plaintiff proved a loss of profits it would have made on resale of a commodity, had it been able to buy such commodity at the price other jobbers could obtain it from defendant, plaintiff can only recover for those

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damages suffered before the date of filing of the suit, and is not entitled to recover those suffered between that time and verdict. *Frey & Son v. Cudahy Packing Co.*, 243 F., 205.

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- 22. Not Recoverable for Acts Committed after Date of Appointment of Trustee, for Corporation in Dissolution.**—Where a trustee was appointed for a corporation in dissolution proceedings February 17, 1905, and a substituted trustee thereafter sued defendants, who controlled the corporation, for alleged injuries to its business, charging that they so managed the corporation as to destroy its competition with another corporation, and refused to permit it to do business, plaintiff could not recover for any of the alleged acts committed after the date of the appointment of a trustee, since from that time defendants were not in control of the company. *Strout v. United Shoe Mach. Co.*, 208 F., 650.

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- 23. Same—Not Recoverable by Trustee of Corporation, Where Acts Charged were Committed more than Six Years Prior to Date of Suit.**—A trustee of a corporation, appointed in dissolution proceedings, could not recover damages alleged to have resulted to its business from a conspiracy of those previously in control, preventing the corporation from doing business and using its patents, where the acts charged were committed more than six years prior to the date of the writ. *Ib.*

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- 24. To Sustain Claim for, Specific Injury must be Proved.**—That a corporation is a monopoly in violation of the Sherman Law and subject to dissolution at the suit of the Government, does not of itself give a right of action for unfair competition to any particular person, but, to sustain a claim for damages specific injury must be proved. *Motion Picture Patents Co. v. Eclair Film Co.*, 208 F., 417.

5—344

- 25. To Recover under § 7, Proof must show Actual Damages, Susceptible of Expression in Figures, not Speculative or Uncertain.**—To recover damages under § 7 of the Sherman Law, plaintiffs must show that as a result of defendant's acts, actual damages susceptible of expression in figures were sustained, and they must not be speculative, remote, or uncertain. *American Sea Green Slate Co. v. O'Halloran*, 229 F., 79.

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- 26. Same—Can not Recover Damages Caused by Payment of Price Higher than Market Price, where there was no Evidence of Market Value.**—The producers of a particular kind of slate organized a corporation and sold all of their output to it at 10 per cent discount from its list prices. The corporation sold to wholesalers, including plaintiffs. A number of persons in the roofing business in Cleveland, some of whom had been plaintiff's customers, organized a roofing company, and

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- such company was constituted the exclusive selling agent of the slate company in Cleveland. *Held* that, in an action by plaintiffs under § 7 of the Sherman Law, plaintiffs could not recover damages caused by the fact that they were compelled to buy at a price higher than the market value, where there was no evidence of market value, except evidence as to the price at which the producers sold to the slate company, as this company bought each producer's whole product, including sizes slow of sale, as well as sizes largely desired, and it was not fair to assume that, had there been no combination, plaintiffs could have bought from the producers at the price at which they sold to the company. *Ib.* 5—310
27. *Same*—Nor for Loss of Former Customers on Supposition they would have Continued to Buy, where no Evidence to Support Supposition.—Damages for the loss of the business of former customers of plaintiffs, who became members of the roofing company, could not be recovered on the supposition that they would have continued to buy as much as in previous years, where there was no evidence to support this supposition, and there was not even evidence that such former customers obtained any slate at all of the kind in question. *Ib.* 5—310
28. *Same*—To Recover, Plaintiffs must Prove Customers Ceased Buying because of Unlawful Combination.—Damages could not be recovered for the loss of the business of the customers who ceased buying from plaintiffs and became members of the roofing company, unless plaintiffs showed that the change was made because of the unlawful combination, since this could not be inferred from the fact that the change was made. *Ib.* 5—311
29. Sustained by a Performer's Agent Blacklisted are within § 7 of the Sherman Law.—The damages sustained by a performer's agent blacklisted by the members of such combination were within section 7 of the Sherman Law, providing that any person, injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by that act, may sue therefor and recover threefold the damages sustained. *Martenelli, Ltd. v. United Booking Offices*, 227 F., 171. 5—952
30. Measure of, in Suit for Unlawful Discrimination.—The measure of a jobber's damages for unlawful discrimination against him by a manufacturer whose product the jobber had been selling for several years, the sales increasing each year, is not limited to profits lost on sales which he proved he could have made; but the jury could have inferred, from the average increase of sales, the probable increase during the time of the discrimination, and could allow for the loss of profits on such sales. *Frey & Son v. Welch Grape Juice Co.*, 240 F., 117. 6—834

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- 31. Same—Not Recoverable, for Loss of Profits on Sales of Other Articles.**—A jobber, to whom a manufacturer of a well-known product refused to sell his product at less than the regular price charged to retailers can not recover as damages the loss of profits on sales of other articles to customers desiring that product, who dealt with competing jobbers in order to get all their goods at the same place, since such damages are too remote and uncertain, and could have been prevented by the jobber buying the product at the retailers' price and reselling it without profit. *Ib.* 6—865
- 32. Recoverable for Unfair Practices Used in Attempt to Monopolize.**—Where a company attempted to monopolize the manufacture and sale of coated wire nails, and as part of its plan engaged in various illegal and unfair practices, such as hindering its competitors from obtaining raw materials and the necessary machines, bribing their factory employees to disclose factory conditions and to send out defective goods, and bribing office employees to disclose the names of their customers and their contracts, and then selling to such customers below cost, a competitor attacked in these ways had a right of action for damages, under the Sherman law, since, while no action lies under that act for unfair practices, damages are recoverable thereunder for monopolizing, or attempting to monopolize, and acts which are a part of the monopolizing, or attempting to monopolize, are a subject for damages. *American Steel Co. v. American Steel & Wire Co.*, 244 F., 302. 6—1021
- 33. Same—Parties Joining at Different Times in Attempt to Monopolize, Liable for Acts in which they Participated.**—Where a company was engaged in a single continuing attempt to secure a monopoly of a particular business, in which attempt different parties joined successively, and by which a competitor was injured, all those joining in the unlawful attempt at different times becomes liable for whatever injury resulted from the tortious act in which he participated. *Ib.* 6—1022
- 34. Same—Need not Expect to profit by Illegal Acts to Render them Liable.**—A party participating in a company's attempt to monopolize a particular business need not expect to profit by his illegal conduct, in order to render him liable. *Ib.* 6—1022
- 35. In Action for, Pleading must Describe Trade or Business Injured, and that Acts Employed were Intended to Injure It.**—In an action against an illegal monopoly for damages under the Sherman Law, the declaration must describe the conditions in the trade in question, the alleged conspiracy or combination, and the business of plaintiff, and the effect thereon of the alleged conspiracy or combination, sufficiently so that

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the court can see that its acts might have affected the general conditions in the trade, and that plaintiff's business and situation were such that it might have been damaged by its conduct. *Ib.* 6—1023

36. Action for, under Sherman Law, is for Personal Wrong, and Sounds in Tort.—An action under the Sherman Law, for treble damages, for injuries to person or property by reason of unlawful monopoly, is one for a personal wrong, and sounds in tort. *Imperial Film Exchange v. General Film Co.*, 244 F., 987. 6—1045

37. Excess Exacted over Reasonable Rate, Affords Basis for Damages under Section 7 of the Sherman Law.—When more than a reasonable rate is exacted as a result of an unlawful combination, the excess over what was reasonable affords a basis for the damages recoverable under section 7, and whether, and to what extent, such rate was unreasonable are questions determinable by the jury, on proper evidence and instructions. *Thomsen v. Cayser*, 243 U. S., 88. 6—729

38. Recoverable under Sherman Law are Loss of Profits.—In an action for damages under the Sherman Law, the damages recoverable are the loss of profits that would have been made if the plaintiff had been permitted, as freely as the law says he should be permitted, to get his supply of goods to meet the needs of his customers. *Lowe Motor Supplies Co. v. Weed Chain Tire Grip Co.* (Not reported.) 6—896

ACTIONS FOR RECOVERY. See ACTIONS AND DEFENSES, 30-54.

DECLARATIONS.

1. Averments.—A declaration in an action for damages under the Sherman Law, which does not aver that the goods manufactured by plaintiff, and in respect of which he claims to be injured, are a subject of interstate commerce, or that the acts complained of have anything to do with any contract in restraint of trade, or that the parties are citizens of different States, is demurrable. *Bishop v. American Preserves Co.*, 51 F., 272. 1—49

2. Duplicity.—A declaration in a suit based on section 7 of the Sherman Law, to recover damages resulting to plaintiff from a violation of such provision, which alleges in a single count that defendant entered into a "contract, combination, and conspiracy" in restraint of trade, is bad for duplicity. *Rice v. Standard Oil Co.*, 134 F., 464. 2—633

See also PARTIES, 3.

DECREE.

1. Requiring Railway Company to Dispose of Stock in Competing Company—Scope of Relief.—The Federal district court, in relieving against a combination in restraint of interstate trade, created contrary to the Sherman Law, by the acqui-

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tion by the Union Pacific and Central Pacific lines of a dominant stock interest in the Southern Pacific Company, a competing railway system, should, by its decree, provide against the right to vote such stock while in the ownership or control of the Union Pacific Railroad Company, or any corporation owned by it, or while held for it by any corporation or person, and forbid any transfer or disposition thereof in such wise as to continue its control, and should enjoin the payment of dividends on the stock while so held, except to a receiver appointed by the court to collect and hold such dividends until disposed of by its decree. *U. S. v. Union Pacific R. R. Co.*, 57 L. Ed., 124. 4—685

2. In Applying Relief, Court will Deal with each Case as it Finds It.—In applying the general rules as to relief under the Sherman Law as declared in the *Standard Oil Case* (221 U. S., 1, 78), the court must deal with each case as it finds it; and where the combination has been effected by purchase by one corporation of a dominant amount of stock of its competitor the decree should provide an injunction against the right to vote stock so acquired, or payment of dividends thereon except to a receiver, and any plan for disposition of the stock should be such as to effectually dissolve the unlawful combination. *Ib.*, 226 U. S., 96. 4—685

3. Whether Connecting, but not Competitive, Portions of Railway Can be Purchased, not Determined.—Whether the decree can provide for the purchase by the Union Pacific of such portions of the Southern Pacific as are only connecting and are not competitive and which effect a continuous line to San Francisco, not now determined, with leave to the district court to consider any plan proposed to effect such results. *Ib.* 4—686

4. In Framing, Each Case Must Stand Upon Its Own Facts.—Each case under the Sherman Law must stand upon its own facts and this court will not regard the methods provided in decrees of other cases as precedents necessarily to be followed where a different situation is presented for consideration. *U. S. v. Union Pacific R. R. Co.*, 226 U. S., 474. 4—691

5. Same—Majority of Governing Boards of Competing Railways Should not Consist of Same Persons.—The ultimate determination of the affairs of a corporation rests with its stockholders and arises from their power to choose the governing board of directors; and the Supreme Court will not approve a method of distributing stock of a railroad company held by a competitor so that the natural result will be that a majority of the governing boards of both roads shall consist of the same persons. *Ib.* 4—692

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6. **Same—Proposed Plan of Separation, not Approved.**—In this case it is not impossible under the plan proposed that this result will happen and therefore it is not approved. *Ib.* 4—692
7. **Same—In Ending Combination, Effectual Means Should be Provided.**—The main purpose of the Sherman Law is to forbid combinations and conspiracies in undue restraint of interstate trade and to end them by as effectual means as the court may provide. *Ib.* 4—693
8. **Same—While Conserving Property Interests, Purpose of Statute Should not be Sacrificed.**—A court of equity dealing with an illegal combination should conserve the property interests involved, but never in such wise as to sacrifice the purpose of the statute. *Ib.* 4—693
9. **Same—Transfer of Stock of Southern Pacific to Stockholders of Union Pacific, Would not Effectually End Combination.**—Without precluding the district court from considering all plans submitted as provided by the former opinion and the decree, the Supreme Court holds that a transfer of the stock of the Southern Pacific Company to the stockholders of the Union Pacific Railroad Company would not so effectually end the combination as to comply with the decree. *Ib.* 4—694
10. **Same—Ownership of Stock of a Railway Company by Stockholders of a Competing Company, will not Effectually end Dominating Control.**—The unlawful combination found by the Supreme Court to exist as the result of the acquisition by the Union Pacific Railroad Company, through a subsidiary corporation, of 46 per cent of the capital stock of the Southern Pacific Company, for the purpose of obtaining the dominating control of the entire Southern Pacific system, will not be so effectually ended as to comply with the court's decree by a sale of such shares to the stockholders of the Union Pacific Railroad Company substantially in proportion to their respective holdings, or by a distribution thereof by dividend to such shareholders. *U. S. v. Union Pacific R. R. Co.*, 57 L. Ed., 306. 4—694
11. **Power of Single Judge to Enter, in Expedited Suit.**—Where the Supreme Court reversed a decree dismissing a suit to enforce the Sherman Law, and remanded the case with specific directions, the decree on the mandate may be entered by any district judge presiding, or circuit judge assigned to the court, under the Judicial Code, § 18, notwithstanding the Expedition Act of February 11, 1903 (32 Stat., 823), requiring the assignment for the hearing of actions involving the Sherman Law before not less than three judges; the word "hearing" meaning a trial requiring judicial determination. *U. S. v. Terminal R. R. Ass'n*, 197 F., 449. 4—505
Reversed, 226 U. S., 420.

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12. **Entered by Single Judge in Expedited Suit, not Subject to Collateral Attack.**—A decree entered by a single judge in conformity to the mandate of the Supreme Court reversing a decree dismissing a suit to enforce the Sherman Law, and remanding the case with specific directions, is not void nor subject to collateral attack, even if there was error in holding that a single judge could enter the decree notwithstanding the Expedition Act of February 11, 1903, requiring the assignment for hearing of such actions before not less than three judges. *Ib.* 4—506
13. **Interested Persons, not Parties, may be Heard in Supreme Court Concerning Decree.**—Even though persons seeking to intervene on the settlement of a decree were not parties and therefore can not intervene in the court below, they may be entitled to be heard in the Supreme Court concerning the decree in so far as it may operate prejudicially to their rights. *U. S. v. Terminal R. R. Ass'n*, 236 U. S., 199. 4—516
14. **Same—Not to Safeguard One Interest by Destroying Another.**—The decision and mandate of the Supreme Court in regard to a combination declared illegal under the Sherman Law should not be interpreted as safeguarding one public interest by destroying another, or as making the movement of transportation freer in some channels by obstructing its flow in others. *Ib.* 4—525
15. **Same—Decree Modified and Decision Explained.**—The decision of the Supreme Court (224 U. S., 383) explained, and the decree entered by the court below on the mandate modified so as to recognize the right of the Terminal Company as an accessory to its strictly terminal business to carry on business exclusively originating on its lines, exclusively moving thereon, and exclusively intended for delivery on the same. *Ib.* 4—526
16. **Enjoining Certain Acts of Wholesale Grocers' Ass'n, but Permitting Organization to Exist for Social, etc., Purposes.**—Where, in a suit against an association of wholesale grocers whose constitution and by-laws stated its purpose to be the promoting of harmony between the members of the association and the manufacturers of food products, to the end that the wholesale grocers might be recognized as the economical channel of distribution of the products of the manufacturers, to restrain alleged violations of the Sherman Law, the decree, after enjoining certain acts, expressly provided that the association, its officers and members, were not restrained from maintaining the organization for social or other purposes than those therein prohibited, the mere maintenance of the association subsequent to the decree under the same constitution and by-laws was not a violation of the decree, since it would be presumed that the

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court familiarized itself with the fundamental nature of the association as set out in its constitution and by-laws, and in view of this presumption the decree was intended to mean that the court found no illegality in the framework of the association's organization but only in certain of its activities, which were expressly enjoined. *U. S. v. Southern Wholesale Grocers' Ass'n*, 207 F., 438. 5—318

17. **Same—Enjoining Issuing of Lists of Members and Non-Members of Association.**—A decree enjoining an association of wholesale grocers from publishing any book, pamphlet, or list containing only the names of wholesale grocers who had announced their intention or agreed, directly or indirectly, expressly or impliedly, to work in harmony with the association was violated by the issuance of lists, the names in which were purposely confined to those, whether members or non-members or those otherwise not in sympathy with its purposes, who worked in harmony with the association in effecting its purpose of confining the sales of manufacturers to those who were exclusive wholesalers, and the addition or omission of names with intent to evade the decree did not change the situation. *Ib.* 5—319
18. **Exaction of Promise from Prospective Members of Association not to sell Direct to Consumers, etc., Not a Violation of.**—Where the decree in a suit against an association of wholesale grocers to enjoin certain alleged violations of the Sherman Law, after enjoining certain acts, specifically provided that the association, its officers and members, were not restrained from maintaining the organization for social or other purposes than those therein prohibited, the exaction of a promise from prospective members not to sell direct to consumers while they remained members of the association, without requiring any oath to this effect or imposing any forfeit, fine, or penalty except ineligibility to continued membership, was not a violation of the decree, since, the membership being limited to exclusive wholesalers, the purpose of this promise was merely to convince the association that there was a reasonable expectation on the part of the applicant that he would remain eligible long enough to justify his admission to membership. *Ib.* 5—320
19. **Same—Mailing of "Green Book," to Manufacturers, etc., Subsequent to Decree, a Violation of.**—In a suit against an association of wholesale grocers to enjoin alleged violations of the Sherman Law, the decree enjoined the association, its directors, officers, etc., from doing any act to hinder or prevent, by intimidation or coercion, any person, firm, or corporation from selling any commodity to any other person at any price agreed upon. The association had previously

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issued lists of exclusive wholesale grocers, called the "Green Book," as a means of compelling manufacturers to confine their sales to those whose names appeared on the list. Subsequent to the decree there was no express repudiation of the former policy of coercion, and the association continued to send its lists to manufacturers and on request to furnish manufacturers information as to the standing of applicants for the privilege of buying direct from manufacturers. *Held*, that these acts constituted a violation of the decree, since, considered in connection with the former policy of coercion, they constituted a deliberate utilization by the association of the influence over the manufacturers which its previous policy had gained for it, especially where subsequent to the decree it mailed to manufacturers a circular stating that it would continue to issue the "Green Book," and that none of its methods, rules of practice, or activities would be affected by the decree, difficulty continued to attend the direct buying from certain manufacturers supplied with lists unless the buyer's name appeared on the lists, and a general impression prevailed that listing was essential to direct buying privileges. *Ib.* 5—323

20. Wholesale Grocers Mailing Legitimate Arguments to Manufacturers Requesting Abandonment of Certain Policy Not a Violation of.—An association of wholesale grocers, by addressing legitimate argument to manufacturers to procure the abandonment by manufacturers of a certain policy and the continuance of another policy, did not violate the Sherman Law, prohibiting contracts, conspiracies, or combinations in restraint of trade, nor a decree enjoining violations of that act, but expressly permitting the association to continue its organization for social or other purposes than those therein prohibited. *Ib.* 5—325

21. Same—Director of Association Violating, Personally Responsible, Although Association Held Innocent of Violating Decree.—Where a director of an association of wholesale grocers, which, with its directors, officers, etc., had been enjoined from preventing manufacturers, by coercion or intimidation, from selling direct to retailers, made use of the association's name and his position in it as a director to prevent such direct sales by a manufacturer, the fact that as a director he had no authority to take such action, while it might exonerate the association, did not have that effect as to the director. *Ib.* 5—326

22. Determining that a Labor Union was an Unlawful Combination, Can Not be Sustained where there was no Such Allegation in the Pleadings.—A decree determining that a labor union was an unlawful combination or conspiracy in restraint of trade in violation of the Sherman Law could not be sustained

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- where there was no allegation of defendant's violation of such law in the pleadings. *Mitchell v. Hitchman Coal & Coke Co.*, 214 F., 713. 5—631
23. Not Providing for Separation of Various Units of a Monopoly, Does Not Afford Relief to which Government is Entitled.—A proposed plan for the abrogation of an illegal monopoly in photographic cameras, films, papers, and plates, which did not provide for the separation of the business of manufacturing the various units of manufacture, did not afford the relief to which the Government was entitled, where the various units were combined with the intention of monopolizing and restraining trade in such products, and their manufacture constituted the monopoly, even though some of such units were fairly non-competing. *U. S. v. Eastman Kodak Co.*, 230 F., 523. 5—911
24. Same—Proposed Final Decree Submitted, Held Proper.—In a suit to abrogate an illegal monopoly in photographic supplies, in which it had been determined that the Government was entitled to a decree in its favor, proposed final decree held proper. *Ib.* 5—912
25. Finding Each Defendant Guilty of Independent Acts, in Contempt Proceedings, and Consolidating Sentence—When Such Sentence Will Be Reversed.—A decree adjudging each defendant guilty of the independent acts set out in separate paragraphs of a petition charging them with contempt of an injunction order, and consolidating sentence without indicating how much of the punishment was imposed for the disobedience in any particular instance, should be reversed if it appears that the defendants have been sentenced on any charge which, in law or in fact, does not constitute a disobedience of the injunction. *Gompers v. Bucks Stove & Range Co.*, 57 L. Ed., 797. 4—789
26. Entered after Questions Raised by Pleadings Have Become Moot, Will Be Reversed.—The agreements between British, German, and American steamship companies which were assailed as contrary to the Sherman Law, having necessarily been dissolved by the European war, and the questions raised by the bills having thereby become moot when the decrees of the court below were entered, the decrees are reversed and the cases remanded with directions to dismiss the bills without prejudice—as in *United States v. Hamburg-American Co.*, 239 U. S., 466. *U. S. v. Prince Line, Ltd.*, 242 U. S., 537. 5—685

DEFENSES. See ACTIONS AND DEFENSES.

DEFINITIONS. See WORDS AND PHRASES.

DEMURRER.

1. A bill in equity, and the demurrer thereto, are neither of them to be read and construed strictly as an indictment, but are

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to be taken to mean what they fairly convey to a dispassionate reader by a fairly exact use of English speech. *Swift & Co. v. United States*, 196 U. S., 375. 2—642

2. **Decision of Judicial Committee of Privy Council Will Not Be Applied on Hearing of to Indictment Charging Monopoly.**—The business of the United Shoe Machinery Company is conducted by a system of leases, which are substantially the same as those described in *United Shoe Machinery Company v. Brunet* (1909), App. Cas., 330. It is claimed in these indictments that the provisions of these leases are unreasonable, and unlawfully operate to build up the alleged monopoly of the United Shoe Machinery Company. It is claimed by the respondents that *United Shoe Machinery Company v. Brunet* should be applied here, and that in harmony therewith the leases in question here should be declared valid. *United Shoe Machinery Company v. Brunet* was decided by a very able court, yet it was a decision of the judicial committee of the Privy Council, and therefore not authoritative as the decisions of the established courts of Great Britain. Independently of these considerations, the pleadings in these indictments do not permit us to so apply on this demurrer *United Shoe Machinery Company v. Brunet* to such extent as to support the demurrer. *U. S. v. Winslow*, 195 F., 594. 5—194

3. **May Be Overruled where Questions Raised by It to Indictment Are Doubtful.**—Where the questions raised by demurrer to an indictment are both intricate and doubtful, the demurrer may be overruled, and their decisions postponed until the trial on the merits. *Ib.* 5—175

See DECLARATIONS, 1; HABEAS CORPUS, 1.

DIRECT AND IMMEDIATE EFFECT.

DIRECT. See COMBINATIONS, ETC., 48, 49, 73, 88, 133, 137; CONSTITUTION, 9; INTERSTATE COMMERCE, 11, 23; STATUTES, 18, 26, 30, 33.

DIRECT AND IMMEDIATE. See COMBINATIONS, ETC., 49, 114, 115, 193.

DIRECTLY AND APPRECIABLY. See COMBINATIONS, ETC., 31, 89; STATUTES, 35.

DIRECTLY AND EFFECTUALLY. See COMBINATIONS, ETC., 192.

DIRECTLY AND NECESSARILY. See COMBINATIONS, ETC., 32, 352; STATUTES, 24, 52.

DIRECTLY AND SUBSTANTIALLY. See COMBINATIONS, ETC., 32, 35, 47, 139, 140, 196; CONGRESS, 7; STATUTES, 17, 21, 22, 23, 105, 114.

DISCLAIMER.

Of Power to Control Business of Others, Can Not Detract from Documentary Evidence.—A disclaimer on the part of defend-

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ants of power of any one of them to control the business of the others can not detract from the significance of documentary evidence bearing on the relations of the defendants to each other. *U. S. v. Reading Co.*, 226 U. S., 355. 4—723
See also EVIDENCE, 68.

DISCRIMINATION.

In Price by Manufacturer, between Different Customers, Unlawful.—A discrimination in price by a manufacturer between different purchasers of his commodity under section 2 of the Clayton Law, is an unlawful thing, whether there was a combination in the furtherance of which it was made, or not; but in order to recover damages for such a discrimination, it must appear that the effect of such discrimination is substantially to lessen competition.

Frey & Son v. Welch Grape Juice Co. (not reported). 6—875

Frey & Son v. Cudahy Packing Co. (not reported). 6—885

DIVISION OF TERRITORY. *See* COMBINATIONS, ETC., 99, 109, 265.

DOCUMENTARY EVIDENCE. *See* EVIDENCE, 8, 9; and PRODUCTION OF DOCUMENTS.

DRUGS. *See* COMBINATIONS, ETC., 87, 309, 313, 314.

DUPPLICITY.

1. **Indictment under Sherman Law May Join Counts for Conspiracy to Restrain, Conspiracy to Monopolize, and for Monopolizing.**—In an indictment under the Sherman Law, counts for conspiracy in restraint of interstate commerce, for conspiracy to monopolize a part of such commerce, and for monopolizing a part of such commerce may be joined. *U. S. v. Patterson et al.*, 201 F., 726. 5—44

2. **Indictment for Conspiracy Not Duplicious in Charging Violation of More than One Law in Single Count.**—A charge in a single count of a conspiracy to violate two or more laws of the United States does not render the indictment duplicious. *Knauer v. U. S.*, 237 F., 13. 6—693

ENFORCEMENT. *See* INJUNCTIONS, 2, 15, 18, 19, 23, 30, 31; COMBINATIONS, ETC., 70—74.

EQUITY.

1. **Equity will not encourage a combination in restraint of trade and probably illegal under the Sherman Law.** *Amer. Biscuit Mfg. Co. v. Klotz*, 44 F., 721. 1—3

2. **Jurisdiction—Equity has jurisdiction to restrain public nuisances on bill or information filed by the proper officer on behalf of the people.** *U. S. v. Debs*, 64 F., 724. 1—322

3. **Same—Right to Jury.**—The power given by the Sherman Law to circuit courts "to prevent and restrain violations" of the act is not an invasion of the right of trial by jury, as the jurisdiction so given to equity will be deemed to be limited to such cases only as are of equitable cognizance. *Ib.*

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4. A bill in equity and the demurrer thereto are neither of them to be read and construed strictly as an indiotment, but are to be taken to mean what they fairly convey to a dispassionate reader by a fairly exact use of English speech. *Swift & Co. v. United States*, 196 U. S., 375. 2—642
5. Equity Will Not Enforce Contract until Legality of Is Established.—Where a bill alleges infringement of patents by the violation of the conditions of a license contract thereunder, and seeks in effect the specific enforcement of the contract, its legality is involved directly and not collaterally, and must be established before equity will grant relief. *Indiana Mfg. Co. v. Case Threshing Machine Co.*, 148 F., 21. 3—21
- See also PARTIES; COURTS; PLEADING AND PRACTICE.

EQUITY PRACTICE.

1. Under new Practice, Defendant Required to Show all his Propositions at Once in his Answer, so that Court may, on Motion, Consider them Before Testimony Taken.—Under the new equity practice, defendant is required to show all his propositions, whether of law or fact, at once in the answer, and the court on a motion to determine points of law authorized by equity rule 29 may consider whether, in view of the facts alleged, any of the legal theories propounded can properly be considered before testimony taken, or by merely taking such evidence as has previously been adduced in support of a plea, so that, when defendant claims that the complaint shows no case for equitable relief, he may not complain if the court considers the admissions or allegations of the answer which explain or enlarge, but do not contradict, the allegations of the bill. *Boyd v. N. Y. & H. R. R. Co.*, 220 F., 178. 5—516
2. Same—Answer Objecting Generally to the Bill; Effect of.—One whose answer, under the reformed equity practice, objects generally to the bill, must be considered as having done so not only on what complainant shows, but also after having had his own conscience purged. *Ib.* 5—517
3. Same—Where One Defendant Raises Issue of Law, and Other Defendants Deny Knowledge; Effect of.—Where one of several defendants to a bill, after stating his own actions or position by answer, raises an issue of law, and other defendants deny knowledge regarding the first defendant, any relief to which complainant is entitled on the statement of such defendant would not be stayed by an allegation of his co-defendant's lack of knowledge. *Ib.* 5—517
4. Same—When Legal Propositions may be Decided in Advance of Final Hearing.—A legal proposition, going to less than the whole case made by a bill in equity, should not be decided in advance of final hearing, unless such decision will add to

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or eliminate from the case a clearly defined and easily stated mass of testimony, the presence or absence of which will not change or affect the method of presenting other aspects of the litigation. *Ib.* 5—517

ERROR.

1. **Sufficiency of Proof Must be Presumed.**—In reviewing a judgment dismissing plaintiffs' complaint over their objection before plaintiffs' testimony had closed, it must be assumed that plaintiffs, if permitted to proceed, would have established that which they alleged, unless negated by their evidence or admissions on the trial. *Thomsen v. Union Castle Mail S. S. Co.*, 166 F., 252. 3—550
2. **Presumption as to Sufficiency of Proof.**—Where defendant's motion to dismiss the complaint for failure to state a cause of action was granted, it must be assumed on a writ of error that plaintiff, if given an opportunity, would have established the allegations of the complaint. *Penna. Sugar Ref. Co. v. American Sugar Ref. Co.*, 166 F., 256. 3—555
3. **Failure of Court to Instruct Jury.**—Defendants in a criminal trial in a Federal court can not assign as error the failure of the court to instruct as to certain theories or inferences, which might find support in the evidence when they did not request such instruction. *Steers v. U. S.*, 192 F., 10. 4—440
4. **Same—Instructions to Jury.**—Instructions in a prosecution for conspiracy, taken together held not erroneous in the absence of requests for more specific instructions on certain points. *Ib.* 4—438
5. **Same—General Objection to Admission of Evidence.**—A general objection to the admission of evidence for which no ground is stated will not support an assignment of error in a Federal court. *Ib.* 4—435
6. **Disposition of Cause on Reversal.**—Where counsel in the trial of a cause and the court in its charge to the jury proceeded on an erroneous construction of the statute on which the action was based, an appellate court will not undertake to determine the case on the evidence in the record, but will remand for a new trial. *Union Castle Mail S. S. Co. v. Thomsen*, 190 F., 536. 4—384
7. **Can not be Assigned, on Failure of Court to Instruct, when Instruction not Requested.**—Defendants in a criminal trial in a Federal court can not assign as error the failure of the court to instruct as to certain theories or inferences, which might find support in the evidence when they did not request such instruction. *Steers v. U. S.*, 192 F., 10. 4—440
8. **Where Evidence, Improperly Admitted, Although Withdrawn, Prejudicial, and Ground for Reversal of Judgment.**—In view of the novelty and difficulty of questions presented in an

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action for unlawful combination and discrimination, the admission of such evidence, in connection with remarks by the trial judge as to the importance of the issues involved, was prejudicial to plaintiff, as obscuring the real issues in the case, though the court correctly charged the jury as to the issues, and told them to disregard the economic questions made by the objectionable testimony; the rule that such a charge will make the error harmless being subject to exception, where the testimony has made such a strong impression on the jury that its withdrawal will not remove the effect caused by its admission. *Frey & Son v. Welch Grape Juice Co.*, 240 F., 117. 6—864

9. When Consent to Final Judgment, not a Waiver of Errors Relied on.—When parties in the Circuit Court of Appeals, desiring to shorten the litigation by bringing the merits directly to the Supreme Court, consent that a final judgment may be made against them in lieu of one remanding the cause for a retrial, the consent is not a waiver of errors relied on, and a final judgment entered as requested is reviewable in the Supreme Court. *Thomsen v. Caysen*, 243 U. S., 83. 6—725

10. Same—Failure to Give Instruction, when Harmless.—Failure to give an instruction upon the burden of proving rates unreasonable, *held*, at most a harmless error, in view of a painstaking trial and careful instructions upon the estimation of damages. *Ib.* 6—730

EVIDENCE.

1. Admissibility—Proclamations of Various Government Officers—Newspaper Reports.—In order to sustain the allegations of a bill praying an injunction against a combination in restraint of interstate commerce, the complainant may offer in evidence, as matter of history, the official proclamation of the various Government officers and also newspaper reports supported by affidavits containing manifestoes and declarations of the respondents. *U. S. v. Workingmen's Amalg. Council*, 54 F., 994. 1—110

Case affirmed, 57 F., 85 (1—184).

2. Admission of Evidence—Order of Proof.—In an action to recover damages for an alleged conspiracy in restraint of interstate commerce it was within the discretion of the trial court to admit evidence of acts and declarations of various of the defendant associations, their officers, committees, members, and agents, made in the absence of many of the other defendants, before a *prima facie* case of conspiracy had been established, and before privity of some of the defendants had been proven, on condition that such connecting evidence should be thereafter given. *Loder v. Jayne*, 142 F., 1010. 2—977

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3. **Same—Burden of Proof.**—The burden of proving a combination and conspiracy between manufacturers and wholesale and retail dealers of proprietary medicines and drugs in restraint of trade, in violation of the Sherman Law, injurious to plaintiff, and that defendants were engaged and took part in such conspiracy, was on the plaintiff. *Ib.* 2—981
 4. **Same—Damages—Burden of Proof.**—In an action for damages for conspiracy in restraint of interstate commerce, in violation of the Sherman Law, the burden was on plaintiff to show some real actual damage to his business by reason of the alleged unlawful combination. *Ib.* 2—989
 5. **Same—Compensation for Extra Work—Evidence.**—Where, in an action for damages to plaintiff's business because of an alleged conspiracy in restraint of interstate commerce plaintiff claimed \$5,000 compensation to himself for extra work claimed to have been required by reason of such unlawful combination, but failed to prove how much additional time he was required to spend in his business after the combination went into effect, he was not entitled to recover for such alleged extra services. *Ib.* 2—989
 6. **Sufficiency—Injunction Pendente Lite.**—Evidence that, by reason of the action of a combination of persons, the crew left complainants' ship as she was about to sail, and that another crew could not be procured for nine days, and then only with the assistance of the police authorities and the protection of a restraining order, while other vessels in the vicinity had no difficulty in getting crews, is sufficient to authorize the court to enjoin interference with the business of the complainants by such combination pendente lite. *Blindell v. Hagan*, 58 F., 606. 1—182
- Affirming 54 F., 40 (1—106).
7. **Acts of One Party.**—Where several persons are proved to have combined together for the same illegal purpose, any act done by one of them, in pursuance of the original concerted plan, and with reference to the common object, is, in the contemplation of the law, the act of the whole party, and therefore the proof of such act will be evidence against any of the others who were engaged in the conspiracy. *U. S. v. Cassidy*, 67 F., 698. 1—449
 8. **Documentary or Oral—Materiality.**—Evidence, whether documentary or oral, sought to be elicited from witnesses summoned in an action brought by the United States to enjoin an alleged conspiracy by manufacturers of paper to suppress competition, in violation of the Sherman Law, by creating a general selling and distributing agent, is material, where it would tend to establish the manner in which such agent executed its functions. *Nelson v. United States*, 201 U. S., 113.

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9. **Same.**—Documentary evidence in the shape of books and papers of corporations are in the possession of the officers thereof, who can not refuse to produce them on the ground that they are not in their possession or under their control. *Ib.* 2—943
10. **Same.**—The immateriality of the evidence sought to be elicited can not justify the refusal of witnesses to obey the orders of the Federal circuit court, requiring them to answer the questions put to them and to produce written evidence in their possession, on their examination before a special examiner. *Ib.* 2—942
11. **Same.**—Objections to the materiality of the testimony are not open to consideration on a writ of error sued out by witnesses to review a judgment for contempt, entered against them for disobeying an order to testify. *Ib.* 2—943
12. **Hearsay Evidence Incompetent.**—In an action by a manufacturer doing an interstate business against members of a labor organization to charge them with liability under the Sherman Law, one of the violations of the act charged being that defendants combined to prevent customers of plaintiff in other States from buying his goods by means of threats or boycott, etc., testimony of plaintiff's salesmen that customers told them of such threats, made by persons claiming to represent defendant organization, was incompetent as hearsay. *Lawlor v. Loew,* 87 F., 257. 4—271
13. **Same—Of Payment of Dues After Action Brought, not Competent as Showing Ratification.**—In an action to charge members of a labor organization individually with liability because of alleged unlawful acts of agents sent out by the organization, evidence that defendants paid dues to the organization after service of the complaint is not competent either as showing ratification by defendants of the acts of such agents or that such acts were authorized when committed. *Ib.* 4—271
14. **Same—When Conflicting—Questions for Jury.**—In an action to charge defendants, as members of various local unions of a labor organization, with liability for acts of agents of the organization on the ground of a combination in restraint of interstate commerce in violation of the Sherman Law, where there was conflicting testimony as to their knowledge of such acts and other evidence from which inferences must be drawn, the question of liability was for the jury, and it was error to withdraw such question from them and to submit only the question of damages. *Ib.* 4—270
15. **Former Acts Competent to Show Purpose.**—The acts of the members of a combination and the effect of their transactions in the conduct of their business prior to the passage of the Sherman Law, which, if done thereafter, would have

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- constituted a violation of the law, are competent and material evidence of the dominant purpose and the probable effect of their similar transactions in their business since that date. *U. S. v. Standard Oil Co.*, 173 F., 184. 3—706
16. When Prior Facts may be Considered.—Allegations as to facts occurring prior to the passage of the Sherman Law may be considered solely to throw light on acts done after the passage of the act. *Standard Oil Co. v. U. S.*, 221 U. S., 46. 4—118
17. Necessary Only to Prove Injury to Complainant's Business as Result of Illegal Scheme.—The Sherman Law declares that any person who shall be injured in his business or property by any other person, or corporation, by anything forbidden or declared to be unlawful by the act which prohibits combinations in restraint of interstate trade and commerce, and combinations or conspiracies to monopolize, etc., may sue therefor in any Federal court in which the defendant resides or is found, and may recover threefold damages, etc. *Held*, That it is only necessary to support an action under such section that complainant's business or property has been in some way injured by reason of defendant's illegal scheme. *Monarch Tobacco Works v. American Tobacco Co.*, 165 F., 777. 3—538
18. *Res Inter Alias Acta*.—In an action for damages to plaintiff by defendant's alleged combination to monopolize or attempt to monopolize interstate commerce in tobacco, in violation of the Sherman Law, defendant's acts and conduct prior to plaintiff's organization and entering the business were immaterial as *res inter alias acta*. *Ib.* 3—539
19. Parol Evidence Admissible to Prove Portions of Contracts not in Writing.—Where a contract for the sale of a business sought to be enforced was only partially in writing, defendant was entitled to prove the balance by parol in order to establish that it was void as in restraint of trade. *McConnell v. Camors-McConnell Co.*, 152 F., 330. 3—199
20. Combination Proven When Shown to Exist With Intent to Restrain.—A combination in restraint of interstate commerce in violation of the Sherman Law was proven when the combination was shown to exist with intent to bring about restraint on interstate commerce; the overt acts being merely cumulative evidence from which the intent, purpose, and continuance of the combination might be inferred. *U. S. v. MacAndrews & Forbes Co.*, 149 F., 838. 3—102
21. Competency of, Given in Prior Proceeding Before Administrative Body.—A copy of testimony shown by a report of the Interstate Commerce Commission to have been given by a witness in an investigation before that body, not otherwise authenti-

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cated, is not competent evidence in a subsequent suit in a Federal court between different parties and in which different issues are involved. (Per. *Gray*, C. J.) *U. S. v. Reading Co.*, 183 F., 442. 3—888

22. **Sufficiency of Evidence.**—Evidence considered in a suit by the United States against various railroad and coal companies engaged in the production and transportation of anthracite coal in Pennsylvania, charging defendants with having entered into a general combination and conspiracy to restrain and monopolize the production and transportation in interstate commerce of anthracite coal, and to control its price in violation of the Sherman Law, and *held* insufficient to establish such charge. (Per *Gray*, C. J.) *Ib.* 3—905
23. **Insufficiency of Evidence to Prove Combination to Sell or Transport Coal.**—The Union Pacific Coal Company, Moore, its western sales agent, the Union Pacific Railroad Company which owned all the stock of the coal company, the Oregon Short Line Railroad Company, and Buckingham, the superintendent of transportation of the railroad companies, were indicted and convicted for combining to restrain interstate commerce by refusing to sell coal to and to transport coal for one Sharp unless he would discontinue an advertisement of sale of coal at a reduced rate. *Held*, There was no substantial evidence of any combination between any two of the defendants either to refuse to sell coal to Sharp or to refuse to transport it for him. *Union Pacific Coal Co. v. U. S.*, 173 F., 744. 3—742
24. **Sufficiency of Proof.**—Unless there is substantial evidence of facts which exclude every other hypothesis but that of guilt, it is the duty of the trial court to instruct the jury to return a verdict for the accused. And where all the substantial evidence is as consistent with innocence as with guilt, it is the duty of the appellate court to reverse a judgment of conviction. *Ib.* 3—735
25. **Conviction on Circumstantial Evidence.**—To warrant a conviction on circumstantial evidence, the proven facts must not only be consistent with the hypothesis of guilt, but must clearly and satisfactorily exclude every other reasonable hypothesis, except that of guilt. *U. S. v. American Naval Stores Co.*, 172 F., 457. 3—682
26. **Before Grand Jury—Not Subject to Judicial Control.**—The evidence that shall be received before a grand jury is not subject to judicial control. *In re Kittle*, 180 F., 947. 3—804
27. **Incompetent Evidence—Only Remedy for Admission of, is by Granting New Trial.**—Where a plaintiff's claim for damages for a tort was submitted to the jury on incompetent evidence as to certain of the items claimed, and a verdict was returned

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- for plaintiff for less than the total amount claimed, the error can not be rectified by requiring a remittitur of the amount of the items so erroneously submitted, since the court can not know whether, or to what extent, such items entered into the verdict, and the only remedy is by the granting of a new trial. *Jayne v. Loder*, 149 F., 23. 3—68
28. **May be Taken by Examiner in Another District.**—Where an examiner is appointed by the court of the district in which the suit is pending, as authorized by equity rule 67, to take testimony, he may lawfully discharge his duty in another district; the court of that district being authorized to issue subpoenas commanding persons residing within the district to appear and testify before such examiner or master. *U. S. v. Standard Sanitary Mfg. Co.*, 187 F., 234. 4—258
29. **General Objection to, when Insufficient.**—A general objection to the admission of evidence for which no ground is stated will not support an assignment of error in a Federal court. *Steers v. U. S.*, 192 F., 7. 4—436
30. **Court to Instruct Jury as to Effect of, when Against One Conspirator Only.**—In a trial of a number of defendants for conspiracy where items of evidence are necessarily admitted which at the time are competent against one defendant only, it is proper for the court to caution the jury as the trial proceeds as to the effect of such evidence, but its failure to do so, when not requested, is not reversible error. *Ib.* 4—436
31. **Statement of One Conspirator, when Admissible Against All.**—On the trial of defendants charged with having conspired to prevent the shipment of certain tobacco in interstate commerce, statements made by one of the defendants while the tobacco was being withheld from shipment, at their instance, were admissible against them. *Ib.* 4—437
32. **Sufficiency of, for Submission to Jury.**—Evidence considered in a prosecution for conspiracy in restraint of interstate trade and commerce in violation of the Sherman Law, and held sufficient to require the submission of the case to the jury. *Ib.* 4—440
33. **In Considering Legality of Contract, Evidence Showing Relations and Previous Conduct of Parties, is Competent.**—In considering the legality of a contract between railroad companies claimed to be in restraint of interstate commerce, and in violation of the Sherman Law, evidence to show the relations between the parties and the previous conduct of the business affected is competent. *U. S. v. L. S. & M. S. Ry. Co. et al.*, 203 F., 307. 5—259
34. **In Action for Damages Against Combination of Coal Dealers, Held Evidence Sufficient to Submit Case to Jury.**—In an action by a private individual to recover threefold damages, author-

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- ized by section 7 of the Sherman Law, against an alleged combination of coal dealers in a city, engaged in interstate commerce, to force plaintiff out of business and into bankruptcy, which they were successful in doing, evidence *held* to entitle plaintiff to submission to the jury of the question whether a combination and conspiracy among defendants existed, whether they maintained a secret organization to keep up prices and to boycott dealers who did not enter the organization, and whether plaintiff was injured as the result of such conspiracy. *Hale v. Hatch & North Coal Co.*, 204 F., 435. 5—169
35. Of Payment of Dues by Members of Labor Union, After Suit Brought, Competent on Cross-Examination.—Where, in an action against members of a trade union for fraudulent conspiracy in restraint of interstate commerce to regulate plaintiff's business or to compel him to unionize his factory, two of the witnesses testified that they continued to be members of the union after the suit was brought, evidence of their payment of dues after the complaint was served, offered solely as a matter of cross-examination bearing on the truthfulness of their testimony in chief, was competent. *Lawlor v. Lowe*, 209 F., 728. 5—409
36. Copies of Trade Journal Sent to All Hatters, Containing Notice of Strike, Picketing, and Boycott, Competent to Show Notice.—On an issue as to whether certain members of a trade union had knowledge of a conspiracy to compel a hat manufacturer to unionize his factory by means of a strike, picketing, and boycott, evidence that copies of a trade journal published by the United Hatters, in which articles relating to the affair were printed and which were distributed in various factories without charge so that the workmen could read them if they desired, minutes of the meetings of the local unions of which defendants were members and extracts from another monthly journal containing a notice that all members of labor unions would be held responsible for unlawful acts of such unions, their officers and agents, a copy of which notice was sent to all hatters whose names appeared in the directory in the city where the manufacturer's factory was located, was admissible to show notice. *Ib.* 5—406
37. Same—Showing Damages which Accrued After Suit Brought, Held Competent.—In an action for fraudulent conspiracy in restraint of interstate commerce in violation of the Sherman Law, evidence showing damages which accrued after suit brought because of acts previously committed was properly admitted. *Ib.* 5—410
38. Introduction of Newspapers, to Show Publicity, and Directions to Bring Notice to Defendants, Held Competent.—In this case, introduction of newspapers was not improper to show pub-

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- licity in places and directions to bring notice home to defendants and to prove intended and detrimental consequences of the acts complained of. *Lawlor v. Loewie*, 235 U. S., 536. 5—424
39. Same—Letters from Customers of Boycotted Manufacturer, etc., Competent.—Letters from customers of a boycotted manufacturer, giving the boycott as reason for ceasing to deal with him, *held* admissible in this case. *Ib.* 5—424
40. On Question of Lawfulness of a Combination, Acts Done in Furtherance of its Objects Competent, after Combination has Been Proved.—On the question whether a combination is lawful or not, declarations of those engaged in it, explanatory of acts done in furtherance of its objects, are competent evidence after the combination has been proved. *Hitchman Coal & Coke Co. v. Mitchell*, 202 F., 555. 5—585
41. Threats of a Labor Organizer, Having no Authority to Carry Them into Execution, Insufficient to Show a Conspiracy to Compel Unionizing of Mine.—Threats of an organizer employed to induce mine workers to form a local of the United Mine Workers of America, to unionize the employes of complainant's mine or shut it down, he having no authority to carry the threats into execution, were insufficient to show a conspiracy to compel the unionization of the mine by unlawful means. *Mitchell v. Hitchman Coal & Coke Co.*, 214 F., 709. 5—623
42. Same—Of Acts of Strikers to Induce Employees to Join Union, Prior to Adoption of Non-Union Policy, not Competent to Show Existence of Conspiracy for Same Purpose After Open Policy Adopted.—Where complainant after a strike had severed all business dealings with the United Mine Workers of America and had established a non-union mine, after which attempts were made to induce complainant's employees to rejoin the union, evidence that, prior to complainant's adoption of the non-union policy, defendants were engaged in a combination or conspiracy and by intimidation, violence, and coercion were trying to prevent complainant from operating his mine, was inadmissible to show the existence of an unlawful conspiracy for the same purpose after the open policy was adopted. *Ib.* 5—630
43. Same—Evidence Reviewed, and Held Insufficient to Establish a Conspiracy to Unionize Mine by Unlawful Means.—Evidence reviewed, and *held* insufficient to establish a conspiracy on the part of officers and representatives of a labor union to unionize the employees of complainant's mine by unlawful means. *Ib.* 5—629
44. In Prosecution for Conspiracy, Evidence Offered by Defendants That Competitors' Machines Infringed Their Patents, When Competent.—Defendants, who were officers and agents of a

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manufacturing corporation, were indicted for conspiracy and combination in restraint of interstate commerce in cash registers and for monopolizing such commerce, in violation of the Sherman Law. On the trial the Government introduced evidence tending to show the conspiracy, and that in pursuance thereof defendants, by methods of unfair competition, had forced competitors in interstate commerce in cash registers to go out of business and to sell their plants to defendants' company. *Held*, that evidence offered by defendants to show that their company was the owner of certain patents, and that the machines made and sold by such competitors were infringements, did not tend to establish a defense, and was irrelevant and incompetent, unless in connection with other evidence showing that the fact of infringement, and not defendants' unlawful acts, was the cause of the competitors going out of business. *U. S. v. Patterson et al.*, 205 F., 30. 5—59

45. On a Trial for Conspiracy, the Fact That Defendants Were Successful in a Patent Suit in the Lower Court, Was *Prima Facie* Evidence of Probable Cause, Though Decree Reversed on Appeal.—On a trial of the officers and agents of the N. Company for conspiring to restrain the interstate trade of the A. Company by making to such company and purchasers and prospective purchasers from it threats of infringement suits and by other means, the fact that the N. Company was successful in the lower court in a suit for infringement was at least *prima facie* evidence of probable cause, though the decree was reversed on appeal. *Patterson v. U. S.*, 222 F., 629. 5—105
46. Same—On Such Trial, Fact of Conspiracy Against a Company, no Evidence of Conspiracy Against its Successor Company, When no Manifestation of Such Purpose.—On such trial the mere fact that there was a conspiracy or joint purpose on the part of the defendants to restrain the trade of competitors of the N. Company, who ceased to exist before the A. Company was organized, by the use of certain unlawful means, was no evidence that they had such joint purpose as to the A. Company, when during the five years of its existence preceding the indictment there was no manifestation of such purpose. *Id.* 5—103
47. Same—On Such Trial, Evidence Defendants were Parties to a Generic Conspiracy in Restraint of Trade of Competitors who Ceased to Exist Before the A. Company was Organized, was Admissible on Question of Conspiracy Against the A. Company.—Though under an indictment charging the officers and agents of the N. Company with conspiring to restrain the interstate business of such company's competitors, which proceeded on the theory that there was a generic conspiracy

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against all competitors extending over a period of 20 years, which as the various competitors named in the indictment came into existence was directed against them, there was evidence to make a question for the jury as to a conspiracy within the period of limitations only as against the A. Company, and only with respect to certain of the means of accomplishing the objects of the conspiracy set forth in the indictment, evidence that the defendants were parties to a generic conspiracy of the character mentioned, and that they conspired in restraint of competitors named who ceased to exist before the A. Company was organized, by the use of means other than those shown to have been employed against the A. Company within the period of limitations, was admissible as bearing on the question whether there was a conspiracy against the A. Company when it came into existence, which continued into the period of limitations. *Id.*

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48. **Same—Evidence of Means Employed to Accomplish Object of Conspiracy, Admissible to Show the Conspiracy Included Such Means, etc.**—Where such indictment alleged that to accomplish the objects of the conspiracy defendants induced, hired, and bribed employees of the N. Company's competitors to disclose the secrets of such competitor's business, and hired and bribed employees of carriers, etc., to disclose the secrets of their employers relative to the transportation of cash registers for such competitors, and instructed and required the N. Company's sales agents to ascertain and report all facts pertaining to the business of such competitors, though these acts were not calculated in themselves to restrain the trade or commerce of any competitor, their sole function being to enable defendants to use other means calculated to restrain such trade, evidence to show that the conspiracy included such means was admissible, and to be considered by the jury as bearing on the further question whether the conspiracy also included effective means of restraining such trade and commerce. *Id.*

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49. **Same—On Trial for Conspiracy and Monopoly, Held Evidence Sufficient to Submit Case to Jury, Whether Conspiracy Extended into the Three-Year Period.**—On a trial for conspiring in restraint of interstate commerce, evidence held to make a question for the jury as to whether there was a conspiracy extending over a great many years on the part of such officers and agents of a corporation as had to do with competition to restrain and destroy the interstate trade of such company's competitors, whether such conspiracy was by the use of certain of the means specified in the indictment directed against the A. Company when it came into existence, and

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whether the conspiracy continued against it into the period of three years preceding the finding of the indictment. *Ib.*

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50. Same—Where there was Substantial Evidence that Officers of a Company were in a Conspiracy, Evidence of Acts by Salesmen Competent for Jury to Determine Continuance of Conspiracy.—Where there was substantial evidence that the officers and agents of the N. Company were in a conspiracy to restrain the interstate trade of a competitor by causing certain wrongful acts to be done, and the question was whether such conspiracy had continued into the period of three years preceding the indictment, evidence as to the doing of such acts within such period in the regular course of the business of the N. Company by sales agents and salesmen of that company who were under the direct supervision of certain of the parties to the conspiracy was not inadmissible on the ground that the defendants were not shown to have had any connection therewith; it being for the jury to determine whether these acts were accounted for by the continued existence of the conspiracy, and this was not the drawing of one inference from another. *Ib.*

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51. Of Sale of Machine by Agent of A. Company, Found to Have Been Injured, and the Employment of Agent Shortly Thereafter by N. Company, Did Not Sufficiently Connect Latter Company with Defective Condition of Machine to Make Evidence Admissible.—On a trial of the officers and agents of the N. Company for conspiring in restraint of the interstate trade of the A. Company, competing with the N. Company in the sale of cash registers, there was evidence that a machine sold by the A. Company was out of order, that the agent of that company made repeated attempts to fix it, and that after he quit the employ of that company a piece of the mechanism was found to be bent, and it was the Government's position that the agent bent it at the instance of the N. Company. *Held*, that evidence that when he left the employ of the A. Company several months afterwards he entered the employ of the N. Company, and that a few weeks before he did so one of the N. Company's competition men was seen in his store, did not sufficiently connect the N. Company with the defective condition of the machine to render this evidence admissible. *Ib.*

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52. Same—That Agent of the N. Company Attempted to Induce Dealer in Competing Machines to Discontinue Business by Threats, More Than Three Years Prior to Indictment, Did Not Make Question for Jury.—On the trial of the officers and agents of the N. Company for conspiring in restraint of the interstate trade of their competitors, evidence that a salesman of the N. Company attempted to induce a dealer who

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bought cash registers from a competitor and resold them to discontinue the business by threats of interference, and evidence of a similar transaction more than three years prior to the indictment, did not make a question for the jury as to a conspiracy with respect to the business of that competitor.

Ib.

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53. Same—Of Acts Within Three-Year Period Against Other Competitors Not Sufficient for Jury, Did Not Tend to Prove Conspiracy Against A. Company, and Was Incompetent.—On a trial of the officers and agents of the N. Company under an indictment charging a conspiracy in restraint of the interstate trade of the N. Company's competitors, directed against the various competitors as they came into existence, on which it was claimed that the conspiracy had existed within the period of limitations as against the A. Company, evidence as to acts directed against other competitors within the three years, but not sufficiently tending to establish a conspiracy against them to make a question for the jury, did not tend to establish a conspiracy against the A. Company, and should not have been admitted. *Ib.*⁶

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54. Same—Of Acts Against Other Competitors Tending to Show a Generic Conspiracy Against All, and Bearing on the Character of the Conspiracy, Admissible.—On such trial, though there was a question for the jury only as to the conspiracy charged within the period of limitations as against the A. Company, evidence as to acts directed against other competitors tending to show a generic conspiracy against all competitors, and bearing on its fixed and absolute character and on its nature otherwise, was admissible, though relating in some instances to matters occurring in the early part of the 20 years during which the conspiracy was claimed to have existed. *Ib.*

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55. Same—Though the Only Question for the Jury Was Whether Within the Three Years the Conspiracy Was Directed Against the A. Company, Evidence of the Use of Other Means Against Other Companies Not Then in Existence, Admissible to Prove Generic Conspiracy.—Under an indictment charging a generic conspiracy on the part of the officers and agents of the N. Company engaged in manufacturing and selling cash registers, in restraint of the interstate trade of all competitors of the N. Company, sought to be carried out by the means therein specified, though the only question for the jury under the evidence was whether such conspiracy within the period of limitations was directed against the A. Company by the use of certain of the means specified, evidence as to the use of other means not specified in the indictment against other competitors, who ceased to exist before the competitor in question was organized, was admissible to establish that the

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generic conspiracy was to use every possible wrongful means that might be effective in putting an end to competition. *Ib.* 5—126

56. Same—On Such Trial, Evidence of the Purchase by the N. Company, of the Business of Other Competitors, and Contracts of Purchase, Admissible as Tending to Show a Conspiracy to Compel Competitors to Sell Out to the N. Company.—On such trial, evidence as to the purchase by the N. Company of the business of other competitors prior to the organization of the A. Company, and how such purchases came about, and the contracts of purchase, were admissible as tending to establish a conspiracy to compel competitors to sell out to the N. Company by the use of any effective wrongful means, and thereby to establish a specific conspiracy against the A. Company to restrain its trade and commerce by other means, if not to compel it to sell out to the N. Company, though at the time of the purchase of the business of such competitors suits for patent infringement were pending against most of them, the evidence tending to show that the suits were not brought in good faith, and that in some of the cases the use of other wrongful means, and not the bringing of the suit, was the real cause of the competitors selling out, and it also appearing that the contracts of purchase prohibited them from engaging in the same business for 20 or 25 years, except in certain States where the business was not large. *Ib.* 5—127

57. Objection to Admissibility of Minutes of Convention, Because of Insufficient Identification, not Sufficiently Specific Upon Which to Base Error.—On the trial of the officers and agents of the N. Company for conspiracy, though an objection to alleged minutes of the proceedings of conventions of the district managers of such company, on the ground that they were hearsay, raised the objection that before the minutes were read their accuracy should be guaranteed by the persons who made them, or by others who were present at the conventions, the objection should have been more specific, as such guaranty might have been furnished, and no error was committed in admitting the minutes over the objection made. *Ib.* 5—129

58. Same—On Trial of Officers and Agents of a Company for Conspiring in Restraint of Trade, Evidence That Such Company Held Patents Covering Machines Sold by a Competitor, not Admissible.—Under section 1 of the Sherman Law, prohibiting conspiracies in restraint of trade or commerce among the several States, a patentee, its officers, and agents may not conspire in restraint of the interstate trade or commerce of a competitor in the article covered by its patent, though

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the competitor's business is an infringement of its patent; and hence, on the trial of the officers and agents of a company for conspiring in restraint of the interstate trade of a competitor, evidence that such company held patents covering the machines and sold by the competitor was not admissible. *Ib.* 5—132

59. Same—On Such Trial, Contracts With Dealers in Cash Registers, Eliminating Them from Competition, Admissible as Evidencing a Purpose to Control, and to Show Generic Conspiracy.—On such trial, contracts with dealers in cash registers, who were mainly dealers in second-hand registers, eliminating them from the cash register field, was admissible as evidencing a purpose to acquire complete control of the business in second-hand cash registers of the N. Company's make, and to show a generic conspiracy, and its character, though they were not referred to in the indictment. *Ib.* 5—128
60. Same—On Such Trial, Evidence That N. Company Held Valid Patents Covering Business of Competitors, Was Admissible as Showing Cause for Bringing Infringement Suits.—On a trial of the officers and agents of the N. Company under an indictment charging them with conspiring in restraint of the interstate trade of the N. Company's competitors, by the use of various wrongful means, under which there was a question for the jury as to whether such conspiracy within the period of limitations was directed against the A. Company by the use of certain of such means other than the bringing in bad faith of patent infringement suits, and evidence was admitted as bearing on the existence of a generic conspiracy against all competitors as to the bringing of such suits against competitors other than the A. Company to compel them to sell out or quit the business, which suits were terminated without a decision of the question of infringement by sales of the competitors' business to the N. Company, evidence that the N. Company held valid patents covering the business of such competitors was admissible, since, if there was real cause for bringing the suits, they were not brought in bad faith. *Ib.* 5—134
61. Same—On Such Trial, Evidence as to Competitive Tactics and Aggressions of Competitors, Was Admissible.—On such trial, evidence as to competitive tactics and aggressions on the part of the N. Company's competitors was admissible, as tending to show that the conspiracy against them was due to provocation, and that, there having been no provocation on the part of the A. Company, the conspiracy was never directed against it. *Ib.* 5—134
62. Same—On Such Trial, Answers of Agents to Letter of Vice President, Stating Policy of the Company, Admissible as Part of Res Gestae.—On the trial of the officers and agents of the N.

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Company for conspiring in restraint of the interstate trade of the N. Company's competitors, where a letter written by such company's vice president and manager to district managers about the time a quo warranto proceeding was instituted against the company for violating the Anti-Trust laws of a State, in which he stated that it was the policy of the company in no case to permit agents to misrepresent cash registers manufactured by other companies, or to induce any purchaser of a cash register made by any other company to break his contract, was in evidence, defendants should have been permitted to introduce as a part of the *res gestae* the answers thereto by certain district managers, stating that such policy had been pursued in their districts. *Ib.* 5—135

63. In Action for Damages, Plaintiff Must Prove Not Only Violation of Law, but Also That Acts of Defendants Have Caused it Damages.—Proof that defendants have violated the Sherman Law, will not establish a cause of action for damages to plaintiff's business, recoverable under section 7, unless it is proved that the defendants' acts have injured plaintiffs and caused them damages recoverable at law. *Locker v. American Tobacco Co.*, 218 F., 448. 4—619

64. In Action for Damages Under the Sherman Law, Prior to the Clayton Law, the Fact That Defendant Had Been Found Guilty at Suit of United States, Not Available to Plaintiff as Prima Facie Evidence.—A plaintiff to sustain an action under section 7 of the Sherman Law, for damages for violations of sections 1 and 2 of the act, brought prior to the act of October 15, 1914 (38 Stat., 731), declaring that a final judgment hereafter rendered in any suit brought by the United States under the Anti-Trust laws, to the effect that a defendant has violated the laws, shall be prima facie evidence against the defendant in any suit brought by any other person against the defendant under the laws, must prove that defendants have violated the Sherman Law, and that by such violation they have so injured plaintiff that damages should be awarded, and the fact that defendants, in a suit by the United States, had been adjudged guilty of violating the act, was not available to plaintiff. *Buckeye Powder Co. v. Du Pont Powder Co.*, 223 F., 884. 4—601

65. Same—Action for Damages—Former Finding of Guilt Not Prima Facie Evidence, the Parties, and Subject Matter of Suit, Being Different.—Where an action under section 7 of the Sherman Law for damages for violations of sections 1 and 2 of the act, was brought prior to the passage of the Clayton Law, making a final judgment in any suit by the United States under the Anti-Trust laws, to the effect that defendant has violated the law, prima facie evidence against defendant in any suit by any other person, a decree adjudging defendants guilty

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- of violations of that Anti-Trust Act, rendered in a suit by the United States, was inadmissible, because the parties in the two suits and the subject matter thereof were different. *Ib.* 4—605
66. Same—Weight of, Not Reviewable by Circuit Court of Appeals.—The Circuit Court of Appeals may not determine whether a verdict is in accord with the weight of the evidence, or review the verdict on any disputed fact, but may only inquire whether assignments of error, properly taken, disclose any material mistake in the trial. *Ib.* 4—602
67. A Prior Plan of Sale May Be Considered as Throwing Light on the Intent of a Manufacturer, in a Later Plan of Sale of a Product.—As elucidating the effect and intent of a plan of sale by a manufacturer of its product, relative to its violation of the Sherman Law, a prior plan of sale may properly be considered. *U. S. v. Kellogg Toasted Corn Flake Co.*, 222 F., 731. 5—859
68. Effect of Disclaimer on Documentary Evidence.—A disclaimer on the part of defendants of power of any one of them to control the business of the others can not detract from the significance of documentary evidence bearing on the relations of the defendants to each other. *U. S. v. Reading Co.*, 226 U. S., 355. 4—723
69. Knowledge of Terms Upon Which Right to Use a Patented Article is Granted, Not Sufficient to Establish Purchaser's Liability for Royalties, etc.—In such case, evidence that the purchaser had knowledge of the terms upon which the holder of the patent rights was accustomed to grant permission to use a machine manufactured by its licensees will not establish the purchaser's liability for royalties; there being nothing in the notice to prevent the holder of the patent rights from varying the royalties. *Motion Pic. Pat. Co. v. Universal Film Co.*, 235 F., 402. 6—646
70. Official Records of Association, Showing Its Purpose, Competent, on Trial of Members for Criminal Conspiracy.—On the trial of members of the association for criminal conspiracy in restraint of interstate trade, the official record of the proceedings of the association, showing the resolutions passed declaring its purposes, and the methods adopted for carrying them out, was admissible in evidence. *Knauer v. U. S.*, 237 F., 21. 6—704
71. That Profit to Dealers Was Average Profit on Other Articles, Not Competent.—In an action by a wholesaler against a manufacturer, who had refused to sell his product to plaintiff at less than the price charged retailers, because plaintiff had been selling the product at less than the price fixed by the manufacturer, where the declaration contained two counts, one for unlawful combination to control the price of the product,

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and the other for unlawful discrimination against plaintiff, it was error to admit evidence offered by defendant that the profit to dealers on the product at the list price was the average profit on other groceries, that defendant was not in any combination with manufacturers of other brands of the product to control the price, and that by the custom of the trade the price at which the jobber was expected to sell was fixed by the manufacturer, all of which was irrelevant and incompetent under the issues. *Prey & Son v. Welch Grape Juice Co.*, 240 F., 116. 6—863

72. Same—Where Improperly Admitted, When Judgment Will Be Reversed.—In view of the novelty and difficulty of questions presented in an action for unlawful combination and discrimination, the admission of such evidence, in connection with remarks by the trial judge as to the importance of the issues involved, was prejudicial to plaintiff, as obscuring the real issues in the case, though the court correctly charged the jury as to the issues, and told them to disregard the economic questions made by the objectionable testimony; the rule that such a charge will make the error harmless being subject to exception, where the testimony has made such a strong impression on the jury that its withdrawal will not remove the effect caused by its admission. *Ib.* 6—864

73. Reports of Decided Cases, on Motion to Strike Out Replication, Not Competent to Show Fraudulent Acts Charged, Were Matters of Public Record.—Where, in a suit by a corporation's trustee in dissolution proceedings to recover damages against defendants for an alleged unlawful restraint of trade in managing the corporation, defendants pleaded limitations, and plaintiff replied that the cause of action had been fraudulently concealed by defendants, reports of decided cases involving the matters in controversy could not be resorted to, on a motion to strike out the replication, as showing that defendants' alleged acts were matters of public record, which they had no power to conceal. *Strout v. United Shoe Mach. Co.*, 208 F., 653. 4—554

OVERT ACTS—CUMULATIVE EVIDENCE. See *U. S. v. MacAndrews & Forbes Co.*, 149 F., 836.

See also WITNESSES.

EXCLUSIVE CONTRACTS.

The Giving of Rebates to Shippers Exclusively Using Their Ships, Not an Unlawful Restraint of Trade.—The practice of a combination of ocean carriers to give rebates to all shippers who ship exclusively by their lines, which tended to secure more regular cargoes and to enable the carriers to anticipate the needs of the trade, is not an unlawful restraint of trade. *U. S. v. Prince Line, Ltd.*, 220 F., 233. 5—681

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EXPRESS COMPANIES. See STATUTES, 174.

FAIR AND REASONABLE RESTRAINTS. See COMBINATIONS, ETC., 129, 329, 346.

FEDERAL TRADE COMMISSION.

Although Commission Has Taken no Action, Suit for Damages May Be Maintained in Federal Court, Under the Clayton Law, for Price Discriminations.—An action may sometimes be maintained in a Federal district court to recover damages for alleged price discriminations by defendant against plaintiff in violation of the Clayton Law, although the Federal Trade Commission has taken no action in the premises. *Frey & Son v. Cudahy Packing Co.*, 232 F., 640. 6—384

FISH. See COMBINATION, 280, 283.

FOREIGN CITIZENS.

May Be Controlled by United States When Operating Within Its Territory.—While the United States may not control foreign citizens operating in foreign territory, it may control them when operating in the United States in the same manner as it may control citizens of this country. *U. S. v. Pacific & Arctic R. & N. Co.*, 228 U. S., 106. 5—231

FOREIGN COMMERCE.

Transportation of Passengers Between United States and Europe Forms Part of.—The transportation of passengers between the United States and Europe forms a part of the commerce of the United States with foreign nations subject to congressional regulation, under which right Congress has power to prohibit all contracts, combinations, and conspiracies in restraint of such commerce. *U. S. v. Hamburg-American Line*, 200 F., 806. 4—894

FORFEITURE OF GOODS. See SEIZURE; STATUTES, ETC., 129.

FRANCHISES. See CORPORATIONS, 36.

FRAUDULENT CONCEALMENT.

Acts Done Openly by Corporation, Incapable of Fraudulent Concealment.—If defendants, having secured control of the G. company buying a majority of its stock, elected officers or directors of their own choosing, including the three individual defendants to form the G. company's entire board of directors, and continued them in office at successive elections, stopping the G. company's business, and enforcing the disuse of its patents in order to prevent its competition with another concern in which they were interested, such acts, not having been done in secret, were incapable of alleged fraudulent concealment, so as to entitle the G. company's trustee, in dissolution proceedings, to recover damages after limitations had run, on the ground that the acts had been fraudulently concealed by the defendants, and that the trustee had acquired knowledge thereof within the period limited. *Strout v. United Shoe Mach. Co.*, 208 F., 652. 4—553

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FREIGHT RATES.

For Ocean-Carrier Trade Not Unreasonable Because at Times Tramp Steamers Cut Them Greatly to Secure Cargo.—Regular rates for the ocean carrier trade are not unreasonable because at particular times or places tramp steamers are willing to cut them greatly in order to secure a cargo. *U. S. v. Prince Line (Ltd.)*, 220 F., 233. 5—680

GRAND JURY.

1. **Powers—Witnesses—Refusal to Testify—Contempt.**—Where, after a witness had refused to testify before a grand jury considering supposed infractions of the Sherman Law, the grand jury made a presentment to the court charging the witness with contempt, and the court, after hearing, ordered the witness to answer the questions and to forthwith produce the papers required, the court's action was equivalent to an express instruction to the grand jury to investigate the matter referred to in the presentment, and hence the fact that the grand jury had been previously acting beyond its power was harmless. *In re Hale*, 139 F., 496. 2—804

Order affirmed. *Hale v. Henkel*, 201 U. S., 43 (2—874).

See also IMMUNITY.

2. **Supervision of Evidence Before, by Courts.**—The evidence that shall be received before a grand jury is not subject to judicial control. *In re Kittle*, 180 F., 947. 3—804
3. **Review by Courts of Evidence Before Grand Jury.**—Except in States having statutes on the subject, courts will not review the evidence received by a grand jury on a motion to quash, for the purpose of passing on its competency. *U. S. v. Swift*, 186 F., 1018. 4—76
4. **Drawing of Special in Kentucky.**—In drawing a special grand jury in a Federal circuit court in Kentucky, the clerk, for the purpose of distributing the jurors as evenly as possible between the several counties from which they were drawn, followed the method of rejecting the names of all jurors drawn who resided in a particular county after the desired number from each county had been drawn, continuing the drawing until the desired number had been drawn from each county. By Rev. St. §§ 802, 805, it is provided that jurors shall be returned from such parts of the district as the court shall direct so as to be most favorable to an impartial trial, and that special juries when ordered shall be returned in the same manner and form as is required by the laws of the State. Ky. St. § 2243 (Russell's St. § 3066), provides for the drawing of juries in the State court by the judge. *Held*, that the mode pursued by the clerk was, at most, irregular, and not prejudicial, and not such a plain error as would be noticed by the Circuit Court of Appeals in the absence of an assignment of error thereon. *Steers v. U. S.*, 192 F., 4. 4—432

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HABEAS CORPUS.

1. **Removal of Prisoner—Jurisdiction of Circuit Courts.**—Where a prisoner, arrested under warrant based upon an indictment in a distant State and district, is held pending an application to the district court for a warrant of removal for trial, the circuit court of the district in which he is held has authority on *habeas corpus* to examine such indictment and to release the prisoner, if in its judgment the indictment should be quashed on demurrer. *In re Terrell*, 51 F., 213.

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2. **Same.**—On *habeas corpus* to release a person held under a warrant of a United States commissioner to await an order of the district judge for his removal to another district to answer an indictment, it is the right and duty of the circuit court to examine the indictment to ascertain whether it charges any offense against the United States, or whether the offense comes within the jurisdiction of the court in which the indictment is pending. *In re Greene*, 52 F., 104.

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3. **Witness—Contempt—Incriminating Evidence.**—Where a witness is committed for contempt in refusing to answer all of a series of questions, for the reason that the answers would tend to criminate him, and some of the answers would have that tendency, he should not be denied relief on *habeas corpus* because some of the questions might be safely answered. *Foot v. Buchanan*, 113 F., 156.

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4. **Witness Committed for Contempt by One Judge Would Not Be Discharged by Habeas Corpus by Another Judge of Same Court.**—Where a *subpoena duces tecum* was directed to be issued by a circuit judge, and the witness was committed for contempt for failure to obey the same, he would not be discharged on *habeas corpus* by another judge of the same court, though the latter was of the opinion that the subpoena authorized an unconstitutional search and seizure of private papers. *In re Hale*, 139 F., 496.

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Order affirmed in *Hale v. Henkel*, 201 U. S., 43 (2—874).

5. **Jurisdiction of Circuit Courts in Contempt Proceedings.**—Where the circuit court has full jurisdiction, its findings as to the act of disobedience of its orders are not open to review on *habeas corpus* in the Supreme Court or any other court. *In re Debs*, 158 U. S., 564.

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HATS. See COMBINATIONS, 253-255, 280, 261.

HOLDING COMPANIES.

TO VOTE STOCK. See COMBINATIONS, ETC., 169-177, 336, 337.

TO RECEIVE ASSIGNMENTS OF PATENTS. See COMBINATIONS, ETC., 178-181, 343.

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IMMUNITY.

1. **Of Witnesses Before the Grand Jury.**—Act of Congress, February 11, 1893 (27 Stat., 443), providing that no persons shall be excused from testifying in a proceeding growing out of an alleged violation of an act to regulate interstate commerce, approved February 4, 1887, on the ground that his testimony will tend to incriminate him, and that no person shall be prosecuted, etc., on account of anything concerning which he may testify in such proceeding, applies only to proceedings connected with the act of February 4, 1887, and does not apply to a prosecution for violation of the Sherman Law, so as to abrogate in relation thereto the Fifth Amendment to the Constitution, providing that no person shall be compelled in a criminal case to be a witness against himself. *Foot v. Buchanan*, 113 F., 156. 2—104
2. **Same—Question of Incrimination One for Judge.**—Where a witness claims that the answer to a question will tend to incriminate him, it is not for the witness, but for the judge, to decide whether, under all the circumstances, such might be the effect, and the witness entitled to the privilege of silence. *Ib.* 2—109
3. **Same.**—Where a person has already been indicted for an offense about which he is to be examined as a witness, and the questions asked him tend to connect him with such offense, the testimony sought is within the inhibition of the Fifth Amendment to the Constitution providing that no person shall be compelled in any criminal case to be a witness against himself. *Ib.* 2—110
4. **Same—Witness Not Compelled to Act Upon an Assurance of Judge.**—Where a witness before a grand jury declines to answer certain questions, and is taken before the judge, who assures him that he can safely answer, as his testimony can not be used against him, he is not compelled by such assurance to relinquish his constitutional privilege, where the answer may tend to criminate him. *Ib.* 2—110
5. **Same.**—An inquisition before a grand jury to determine the existence of supposed violations of the Sherman Law was a "Proceeding" within the act of February 19, 1903 (32 Stat., 848), providing that no person shall be prosecuted or subjected to any penalty for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence in any "proceeding" under several statutes mentioned, including such Sherman Law. *In re Hale*, 139 F., 496. 2—804
6. **Same.**—The examination of witnesses before a grand jury concerning an alleged violation of the Sherman Law is a "proceeding" within the meaning of the proviso to the act of

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February 25, 1903 (32 Stat., 854-903), that no person shall be prosecuted or be subjected to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning which he may testify or produce evidence in any proceeding, suit, or prosecution under certain named statutes, of which the Sherman Law is one. The word "proceeding" should receive as wide a construction as is necessary to protect the witness in his disclosures. *Hale v. Henkel*, 201 U. S., 43. 2—874

7. Same.—The interdiction of the Fifth Amendment operates only where a witness is asked to incriminate himself, and does not apply if the criminality is taken away. *Ib.* 2—898
8. Same.—A witness is not excused from testifying before a grand jury under a statute which provides for immunity, because he may not be able, if subsequently indicted, to procure the evidence necessary to maintain his plea. The law takes no account of the practical difficulty which a party may have in procuring his testimony. *Ib.* 2—899
9. Same.—The difficulty, if any, of procuring such testimony does not render the immunity from prosecution or forfeiture, given by the proviso to the act of February 25, 1903, insufficient to satisfy the guaranty of the Fifth Amendment to the Constitution against self-incrimination. *Ib.* 2—899
10. Same.—A witness can not refuse to testify before a Federal grand jury in face of a Federal statute granting immunity from prosecution as to matters sworn to, because the immunity does not extend to prosecutions in a State court. In granting immunity the only danger to be guarded against is one within the same jurisdiction and under the same sovereignty. *Ib.* 2—900
11. Same.—The privilege against self-incrimination afforded by the United States Constitution, Fifth Amendment, is purely personal to the witness, and he can not claim the privilege of another person, or of the corporation of which he is an officer or employe. [To same effect, *McAllister v. Henkel*, 201 U. S., 90 (2—919).] *Ib.* 2—900
12. Same.—Under the practice in this country the examination of witnesses by a Federal grand jury need not be preceded by a presentment or formal indictment, but the grand jurors may proceed, either upon their own knowledge or upon examination of witnesses, to inquire whether a crime cognizable by the court has been committed, and if so, they may indict upon such evidence. *Ib.* 2—896
13. Same.—In summoning witnesses before a grand jury it is sufficient to apprise them of the names of the parties with respect to whom they will be called upon to testify, without indicating the nature of the charge against such persons. *Ib.* 2—896

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14. Same.—A corporation charged with a violation of the Sherman Law is entitled to immunity under the Fourth Amendment to the Constitution from such an unreasonable search and seizure as the compulsory production before a grand jury under a *subpœna duces tecum* of all understandings, contracts, or correspondence between such corporation and six other companies, together with all reports and accounts rendered by such companies from the date of the organization of the corporation, as well as all letters received by that corporation since its organization, from more than one dozen different companies, situated in seven different States. *Ib.* 2—907
15. Same.—The protection against unreasonable searches and seizures afforded by United States Constitution, Fourth Amendment, can not ordinarily be invoked to justify the refusal of an officer of a corporation to produce its books and papers in obedience to a *subpœna duces tecum*, issued in aid of an investigation by a grand jury of an alleged violation of the Sherman Law, by such corporation. *Ib.* 2—906
16. Same. *Hale v. Henkel* (vol. 2, p. 874) followed as to the inquisitorial powers of the Federal grand jury and the extent of privilege and immunity of a witness under the Fifth Amendment. *McAllister v. Henkel*, 201 U. S., 90. 2—919
17. Persons who furnished evidence in the "beef trust" investigation conducted by the Commissioner of Corporations pursuant to a resolution of the House of Representatives of March 7, 1904, although they did so without being subpoenaed or sworn, can not be prosecuted for violation of the Sherman Law on account of the transactions, matters, or things to which such evidence relates. *United States v. Armour & Co.*, 142 F., 808. 2—951
18. Same.—Scope of Immunity Provisions of Statutes.—The immunity provisions of the various statutes applicable to the investigation, to be valid, must be as broad as the privilege given by the Fifth Amendment to the Constitution. *Ib.* 2—969
19. Same.—Section 6 of the act creating the Department of Commerce and Labor (act Feb. 14, 1903, 32 Stat., 827), defining the powers and duties of the Commissioner of Corporations, requiring him to make investigation into the organization, conduct, and management of the business of all corporations or combinations engaged in interstate or foreign commerce, other than common carriers, and giving him the same powers in that respect as is conferred on the Interstate Commerce Commission with respect to carriers, including the power to subpoena and compel the attendance of witnesses, and to administer oaths and require the production of documentary

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- evidence, contemplates that he shall proceed by private hearings. *Ib.* 2—967
20. Same.—Section 6 (32 Stat., 827) provides that "all the requirements, obligations, liabilities, and immunities imposed or conferred by the 'act to regulate commerce' and by 'an act in relation to testimony before the Interstate Commerce Commission' shall also apply to all persons who may be subpoenaed to testify as witnesses or to produce documentary evidence in pursuance of the authority conferred by this section." *Ib.* 2—967
21. Same.—The act of February 11, 1893 (27 Stat., 443), which is supplementary to the Interstate Commerce Act, provides that "no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, before said commission or in obedience to its subpoena * * * or in any such case or proceeding." *Ib.* 2—967
22. Same.—And the appropriation act of February 25, 1903 (32 Stat., 904), making provision for the enforcement of the interstate commerce and Anti-Trust Laws, contains a similar immunity provision relating to persons giving testimony or producing evidence in any proceeding, suit, or prosecution under said acts. *Ib.* 2—975
23. Corporations Can Not Claim Immunity Because of Testimony Given or Evidence Furnished by Its Officers or Agents.—A corporation, whether State or Federal, can not claim immunity from prosecution for violation of the interstate commerce or Anti-Trust Laws of the United States because of testimony given or evidence produced by its officers or agents before the Interstate Commerce Commission or the Commissioner of Corporations, or in any proceeding, suit, or prosecution under such laws; the right to immunity on account of evidence so given in the several cases granted by act of February 11, 1893 (27 Stat., 443), and acts of February 14 and 25, 1903 (32 Stat., 827, 904), being limited to individuals who as witnesses give testimony or produce evidence. *United States v. Armour & Co.*, 142 F., 808. 2—951
24. Immunity to Witness—Construction of Statute.—The Immunity Act of February 11, 1893, 27 Stat., 443, which relates to evidence given in Government investigations, and provides that "no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, * * *" was enacted to satisfy the demand of the fifth constitutional amendment, and does so by affording the witness absolute immunity from future prosecution for any offense arising out of the transactions to which his testi-

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mony relates, and which might be aided, directly or indirectly, thereby, so as to leave no ground on which the constitutional privilege may be invoked. It operates as an act of general amnesty for all such offenses; but it is not intended to be, and can not be made, a shield against prosecution for offenses committed after the testimony is given or the evidence furnished, since a person can not be said to have been a witness against himself in respect to an offense which had not been committed when the testimony was given. *U. S. v. Swift*, 186 F., 1017. 4—76

25. **Immunity to One Furnishing Evidence—Effect of Statute.**—Defendants were indicted in 1905 for conspiracy to monopolize interstate commerce in fresh meats, in violation of the Sherman Law, but an acquittal was directed, on the ground that they were immune from prosecution because of testimony given and evidence furnished by them before the Commissioner of Corporations in relation to the transactions which formed the basis for the indictments. *Held*, That such immunity did not extend to a subsequent prosecution for continuing the same conspiracy thereafter, nor did it obliterate the facts testified to, which, if legally competent and relevant, might be shown in the subsequent prosecution. *Ib.* 4—76

26. **Not Extended to Witnesses Called by Defense in Civil Suit.**—The Immunity Act of February 25, 1903, c. 755, 32 Stat., 904, as amended by act of June 30, 1906, c. 3920, 34 Stat., 798, provides that for the enforcement of the provisions of the act a specified sum was appropriated to employ special counsel to conduct proceedings, suits, and prosecutions thereunder; provided, that no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he might testify in any proceeding, suit, or prosecution under the act, etc. *Held*, that though the act applies to witnesses, whether called in a criminal or a civil suit, it did not extend immunity to witnesses called by the defense in a civil suit to restrain alleged violations of the act, especially to defendants called by co-defendants, the effect of which would be to render the statute abortive. *U. S. v. Standard Sanitary Mfg. Co.*, 187 F., 236. 4—262

27. **Filing of Sworn Answers Does Not Immunize Persons.**—The act of February 25, 1903, c. 755, 32 Stat., 904, as amended by the act of June 30, 1906, c. 3920, 34 Stat., 798, prohibiting prosecution for a transaction concerning which accused, in obedience to a subpoena, gives testimony in a proceeding under the Sherman Law, does not immunize persons who have filed answers under oath in such a proceeding. *U. S. v. Standard Sanitary Mfg. Co.*, 187 F., 230. 4—252

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28. **Quaere—Whether a Defendant, Called as Witness by Co-Defendant, Obtains Immunity from Criminal Prosecution.**—*Quaere*, whether one of the individual defendants in an equity case brought by the Government to dissolve an illegal combination under the Sherman Law, called as a witness by one of the other defendants in the same suit, obtains immunity from criminal prosecution as to the matters testified to. *Standard Sanitary Mfg. Co. v. U. S.*, 226 U. S., 52. 4—651
29. **Officer Producing Records of Corporation Not Entitled to.**—Testimony given by an officer of a corporation before a Federal grand jury investigating charges of violation of the Sherman Law by the corporation, which consisted in statements of facts shown by the records of the corporation which he produced in obedience to a subpoena duces tecum, does not entitle him to immunity from prosecution for an offense against the United States committed in his official capacity, but which has no connection with the matter then being investigated under the Immunity Act of February 25, 1903, which provides with respect to the Sherman Law and others mentioned that "no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under said acts." *Heike v. U.* 192 F., 88. 4—44
30. **Same.**—Statements compiled by employees of a corporation from its books and records, which were before a grand jury and produced to the grand jury by an officer of the corporation on a subpoena duces tecum, do not constitute testimony given or documentary evidence produced by such officer within the meaning of the Immunity Act of February 25, 1903, which grants immunity in certain cases to a witness "on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise"; the preparation or production of statements in such case being the act of the corporation, and not of the witness. *Ib.* 4—447
31. **Does Not Extend to Person Verifying a Pleading.**—The Immunity act of June 30, 1906, providing that immunity shall extend only to a person who, in obedience to a subpoena, gives testimony under oath, or produces evidence, documentary or otherwise, under oath, does not apply to a person verifying a pleading, so that neither a corporation nor an individual has any immunity in doing so. *Simon v. American Tob. Co.*, 192 F., 663. 4—470
32. **Where the Law Requires It, Pleading of Corporation Must Be Verified, Although Verification Would Incriminate Its Officers.**—Code Civil Procedure of New York, sec. 525, subdiv. 1,

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requires the answer of a domestic corporation to be verified by one of its officers, and section 523 declares that the verification may be omitted where the party pleading would be privileged to testify as a witness concerning an allegation denied in the pleading. *Held*, that while an officer of a corporation may decline to verify its answer in an action at law in a Federal court sitting in New York, where the New York law relating to verification of pleadings must be followed, on the ground that his doing so would tend to incriminate him, the fact that one or all of the corporation's officers would be incriminated if they verified the pleadings and were given no immunity did not relieve the corporation from the duty to verify its answer, since, under such circumstances, it was its duty to select or provide an officer to do so, who would not be incriminated. *Ib.* 4—470

33. Privilege Against Self-Incrimination Is Personal.—The privilege against self-incrimination is personal to a witness and can not be availed of by a corporation, to justify withholding its books, correspondence, and accounts, or closing the mouths of its servants and agents as witnesses. *Ib.* 4—471

34. On Plea of, by Defendant, for Having Given Testimony Before the Interstate Commerce Commission, It Would Be Presumed Commission Was Acting Within Its Power in Examining the Witness.—In a prosecution for attempting to create a monopoly of transportation facilities in violation of the Sherman Law, where defendant pleaded immunity under the Act of February 11, 1893 (24 Stat., 443), on account of having given testimony before the Interstate Commerce Commission during an investigation of the affairs of certain railroad corporations, it would be presumed that the Commission had power to carry on the hearing as one relating to the regulation of commerce between the States, and that it was therefore acting within its power in examining defendant. *U. S. v. Elton*, 222 F., 434. 5—839

35. Same—Is Conferred, Under the Act of Feb. 11, 1893 (24 Stat., 443), Only Where the Evidence is Given Under Compulsion.—Under the act of February 11, 1893 (24 Stat., 443) conferring immunity as to matters testified to before the Interstate Commerce Commission, such immunity is only conferred where the witness would have been privileged under Const. U. S. Amendment 5, and where such evidence is given under compulsion; but where the evidence is given without assertion of the constitutional privilege, or is declined to be given on any ground other than because of its incriminating tendency, immunity is not conferred, the statute having been passed with regard to the prior construction of the Fifth Amendment, under which an assertion of privilege is necessary. *Ib.* 5—840

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- 36. Same—Witness Having Been Subpoenaed, Gave Testimony Before the Interstate Commerce Commission, Under Threat of Punishment for Refusal to Testify; Held, to Be Within the Protection of the Statute.**—The act of February 11, 1893, provides that no person shall be excused from testifying before the Interstate Commerce Commission on the ground that his testimony may incriminate him and that he shall not be prosecuted on account of such testimony. Defendant was subpoenaed, and testified under oath before the Interstate Commerce Commission as to an attempt to create a monopoly of transportation facilities in violation of the Sherman Law, after being led to believe that immunity would be given, and under threats that the Commission would proceed criminally against any person testifying under a subpoena who refused to give evidence. The Commission had expressly refused immunity to others not sworn, and defendant had not conferred with counsel as to a possible waiver of immunity before testifying. He was subsequently indicted upon grounds as to which he had testified before the Commission. *Held*, that defendant was within the protection of the statute.
- Id.* 5—842

- 37. Witness Can Not Be Given, in Private Suit, so as to Bind Department of Justice.**—A witness, in a suit between private parties, can not be given immunity under the Federal statutes so as to bind the Department of Justice. *Great Eastern Clay Products Co.* (not Reported). 6—1042

IN PARI DELICTO. See SALE, 6, 7.

INCIDENTALLY, INDIRECTLY, OR REMOTELY. See COMBINATIONS, ETC., 31, 32, 264, 265, 267, 268, 269, 284, 287, 331, 352; CONGRESS, 7; STATUTES, 14, 15, 21, 106, 115.

INCITING STRIKE. See COMBINATIONS, ETC., 240-244.

INCRIMINATING EVIDENCE. See WITNESSES; IMMUNITY.

INDICTMENTS.

1. **Failure to Allege that Defendants Monopolized or Conspired to Monopolize Trade and Commerce Among the Several States, etc.**—An indictment under section 2 of the Sherman Law, which fails to allege that defendants monopolized, or conspired to monopolize, trade and commerce among the several States, or with foreign nations, fails to state an offense, even though it does allege that they did certain acts with intent to monopolize the traffic in distilled spirits among the several States, and that they have destroyed free competition in such traffic in one of the States and increased the price of distilled spirits therein. *U. S. v. Greenhut*, 50 F., 469. 1—30
2. **Failure to Charge a Crime.**—An indictment under the Sherman Law, relating to monopolies, averred that defendants in pursuance of a combination to restrain trade in distillery

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products between the States and monopolize the traffic therein, acquired by lease or purchase, prior to the passage of the act, some 70 distilleries, producing three-quarters of the distillery products of the United States, and that they continued to operate the same after the passage of the law, and by certain described means sold the product at increased prices. *Held*, That no crime was charged in respect to the purchase or continued operation of the distilleries, since there was no averment that defendants obligated the venders of the distilleries not to build others, or to withhold their capital or experience from the business. *In re Corning*, 51 F., 33. 1—33

3. Same.—The indictment further averred that defendants, in pursuance of the combination, shipped certain of the products to Massachusetts, and sold them there through their distributing agents to dealers, who were promised a rebate of 5 cents per gallon on their purchases, provided such dealers purchased their distillery products exclusively from the distributing agents, and sold them no lower than the prescribed list prices, said rebate to be paid when such dealers should sign a certificate that they had so purchased and sold for six months; and that by this means defendants had controlled and increased the price of distillery products in Massachusetts. *Held*, That no crime was charged with respect to such sales, since there was no averment of any contract whereby the purchasers bound themselves not to purchase from others, or not to sell at less than list prices. *Ib.* 1—34

4. Failure to Charge a Crime.—An indictment under the Sherman Law, relating to monopolies, averred in the fourth count that defendants, in pursuance of a combination to restrain trade in distillery products between the States, shipped certain whisky to Massachusetts and sold it there through their distributing agents to dealers under a contract whereby said dealers were promised a rebate of 5 cents per gallon on their purchases, providing such dealers purchased their distillery products exclusively from the distributing agents and sold them no lower than the prescribed list prices; said rebate to be paid when such dealers should sign a certificate that they had so purchased and sold for six months; and that by this means defendants had controlled and increased the price of distillery products in Massachusetts. *Held*, That no crime was charged with respect to such sales, since there was no averment of any contract whereby the dealers bound themselves not to purchase from others, or not to sell at less than list prices. *In re Corning*, 51 F., 205, approved. *In re Terrell*, 51 F., 213. 1—46

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5. **Failure to Allege Contract or Means of Compulsion—Vagueness.**—In an indictment under section 1 of the Sherman Law, one count alleged in substance, that on a specified date defendants, under the guise of the Distilling and Cattle Feeding Company, sold to certain persons in Boston a quantity of alcohol, then in Illinois, and that, by reason of the fact that said company controlled the manufacture and sale of 75 per cent of all distillery products in the United States, defendants fixed the price at which the purchasers should and did sell such alcohol, and "did compel" said purchasers "to sell said alcohol at no less price than that fixed" by them, but there were no allegations as to the means of compulsion. *Held*, That it could not be assumed from these allegations that the means used was a contract with the purchasers, and the count was bad, as being too vague to charge any contract or restraint of trade between the States. *In re Greene*, 52 F., 104. 1—55
6. **Indictments Which Simply Follow the Language of the Statute—Tested by Specific Facts Alleged.**—Under the Sherman Law, an indictment simply following the language of the statute would be wholly insufficient, for the words of the act do not themselves fully, directly, and clearly set forth all the elements necessary to constitute the offense; and the indictment must, therefore, be tested by the specific facts alleged to have been done or committed. *Ib.* 1—65
7. **Indictment of Stockholders for Acts of Corporation—Omission to State Relation Defendants Bore to the Corporation.**—In indictments of individuals under the said statute, where all the acts alleged to constitute the offense are charged to have been done by a corporation, an omission to state what relation defendants bore to the corporation, other than that of stockholders, is fatal, since mere stockholders can not be held criminally responsible for the acts of the corporation. *Ib.* 1—76
8. **Must Contain Description of the Offense and a Statement of the Facts Constituting Same—Words of Statute.**—An indictment under the Sherman Law must contain a certain description of the offense, and a statement of facts constituting same, and it is not sufficient simply to follow the language of the statute. *U. S. v. Nelson*, 52 F., 646. 1—77
9. **An indictment under the Sherman Law should describe something that amounts to a conspiracy under that act conformably to the rules of pleading at common law, as perhaps modified by general Federal statutes.** *U. S. v. MacAndrews & Forbes Co.*, 149 F., 823, 831. 3—92
10. **Must Show Means Whereby It Is Sought to Monopolize.**—In an indictment under the Sherman Law, it is not sufficient to declare in the words of the statute, but the means whereby

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it is sought to monopolize the market must be set out, so as to enable the court to see that they are illegal. *U. S. v. Patterson*, 55 F., 605. 1—133

Rehearing on general demurrer, 59 F., 280 (1—244).

11. Allegations of what was done in pursuance of an alleged conspiracy are irrelevant in an indictment under this statute, and are of no avail either to enlarge or to take the place of the necessary allegations as to the elements of the offense. *Ib.* 1—174
12. Scope of the Statute.—The words "trade" and "commerce," as used in the Sherman Law, are synonymous. The use of both terms in the first section does not enlarge the meaning of the statute beyond that employed in the common-law expression, "contract in restraint of trade," as they are analogous to the word "monopolize," used in the second section of the act. *Ib.* 1—174
13. The word "monopolize" is the basis and limitation of the statute, and hence an indictment must show a conspiracy in restraint by engrossing or monopolizing or grasping the market. It is not sufficient simply to allege a purpose to drive certain competitors out of the field by violence, annoyance, intimidation, or otherwise. *Ib.* 1—177
14. Acts of Violence.—Where counts in such indictment allege a purpose of engrossing or monopolizing the entire trade in question, acts of violence and intimidation may be alleged as the means to accomplish the general purpose. *Ib.* 1—177
15. Surplusage in an indictment can not be reached by demurrer of any character; but, if it be assumed that a special demurrer will lie, it must point out the specific language objected to, and not require counsel and the court to search through the indictment for what is claimed as demurrable. *U. S. v. Patterson*, 59 F., 280. 1—244
16. An indictment for conspiracy to monopolize interstate commerce in cash registers need not negative the ownership of patents by defendants, or aver that the commerce proposed to be carried on is a lawful one. *Ib.* 1—248
17. Averments.—It is unnecessary to set out in detail the operations supposed to constitute interstate commerce, and in this respect it is sufficient to use the language of the statute. *Ib.* 1—248
18. It is unnecessary to allege the existence of a commerce which defendants conspire to monopolize, as the statute does not distinguish between strangling a commerce which has been born and preventing the birth of a commerce which does not exist. *Ib.* 1—249
19. The indictment need not show that the purpose of the conspiracy was to grasp the commerce into the hands of one of the defendants, or that defendants were interested in behalf

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- of the party for whose benefit they conspired, or what were their relations to such party. *Ib.* 1—249
20. **Grand Jury—Finding—Indictment.**—An indictment should be found only where the grand jury believe that the evidence before them would warrant a conviction. *In re Grand Jury*, 62 F., 840. 1—310
21. **"Monopolizing" and "Attempting to Monopolize" Separate Offenses—Duplicity.**—Under the Sherman Law, which makes it a misdemeanor to "monopolize or attempt to monopolize * * * any part of the trade or commerce among the several States or with foreign nations," monopolizing and attempting to monopolize such commerce are separate offenses and can not be included in one count of an indictment. *U. S. v. American Naval-Stores Co.*, 186 F., 595. 4—53
22. **Same—Sufficiency of Counts.**—Counts of an indictment charging conspiracy to restrain and monopolize interstate trade and commerce in violation of the Sherman Law considered, and held to sufficiently charge and describe the offense. *Ib.* 4—53
23. **When Concerns or Groups Represented by Individuals.**—An indictment for a combination in restraint of interstate commerce in violation of the Sherman Law between defendants as representatives of three different packing concerns, which charges that each concern was represented by certain individuals, each one of whom was authorized to act for the others of his "group," and that the word "group" as used therein is intended to apply to any or all of the members of the particular group, is sufficiently specific where it charges that acts were done by a particular group without averring that each particular member of such group individually took part therein. *U. S. v. Swift*, 188 F., 97. 4—296
24. **Same—When Defendants Charged as Officers of Corporations.**—An indictment for a combination in restraint of interstate commerce in violation of the Sherman Law which charges that defendants were officers of certain corporations which they managed and controlled, directing the corporate action, and that the groups of defendants representing the several corporations combined together to do the illegal acts, sufficiently charges defendants as individuals. *Ib.* 4—297
25. **Same—Charging Combination to Fix Prices for Live Stock and Meats.**—An indictment alleging facts which show that defendants control three extensive packing concerns doing an interstate business and controlling the larger part of the business in the States in which they operate; that they have combined together in a plan to eliminate competition between such concerns by an agreement not to bid against each other for live stock, but to bid exactly the same

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amounts for like grades, and by fixing a uniform selling price to be charged by each, and apportioning among themselves the total business done according to the financial interest of each—charges a contract, combination, or conspiracy in restraint of interstate commerce in violation of Sherman Law. *Ib.* 4—298-301

26. Same—When Substantial Accusation of Crime is Charged.—An indictment is sufficient when it contains a substantial accusation of crime and its statements furnish the accused with such a description of the charge against him as will enable him to make his defense and avail himself of his conviction or acquittal for protection against further prosecution for the same offense, and when from it the court can determine that the facts charged are sufficient in law to support a conviction. *Ib.* 4—298
27. Same—When Acts Charged Constitute a Crime, Immaterial as to Name Given Offense.—An indictment which charges acts constituting a contract, combination, or conspiracy in restraint of interstate commerce in violation of the Sherman Law is good whether such acts are alleged to constitute a contract, combination, or conspiracy. *Ib.* 4—297
30. Charging of Overt Acts Unnecessary in Indictment for Conspiracy.—Congress, by the Sherman Law, having employed the words "conspiracy" and "conspire" without words of limitation in creating offenses affecting interstate commerce, did not provide as in the general conspiracy statute (Rev. St. § 5440) that overt acts shall be necessary to complete the offense, and hence counts in an indictment for conspiracy to monopolize interstate trade and commerce in violation of the Sherman Law were not demurrable for failure to allege overt acts since the unlawful agreement, and not the overt acts, constitutes the crime of conspiracy at common law. *U. S. v. Patten*, 187 F., 667. 4—278
31. Overt Act Need Not Be Alleged.—No overt act need be alleged in an indictment charging a conspiracy to restrain or monopolize interstate trade or commerce, under the Sherman Law, since that statute does not make the doing of any act other than the act of conspiring a condition of liability. *Nash v. U. S.*, 57 L. Ed., 1232. 4—239
32. For Conspiracy, Not Necessary to Allege Overt Act.—In an indictment under the Sherman Law for conspiracy in restraint of interstate trade and commerce, it is not necessary to allege an overt act. *U. S. v. Patterson*, 201 F., 722. 5—38
33. For Engaging in a Monopoly, Need Not Set Out Overt Act.—An indictment for combining and engaging in a monopoly in restraint of interstate trade and commerce need not set out any overt act, as the combination or contract in any form in restraint of trade constitutes the offense under the statute,

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and it is only essential to charge the combination or contract.
U. S. v. Cowell, 243 F., 731. 6—1005

- 34. Sufficient When It Alleges Time When Overt Acts Were Committed.**—An indictment under section 1 or 2 of the Sherman Law, for engaging in a combination in restraint of interstate commerce, or for attempting to monopolize a portion of the same, sufficiently sets out the time of the combination or attempted monopoly when it alleges the time when the several acts relied on to establish the offense were done, and it is not essential to set out the precise time when the purpose was formed or the plan of the combination or attempted monopoly was first devised. *U. S. v. MacAndrews & Forbes Co.*, 149 F., 830. 3—90
- 35. Same—Combination and Conspiracy.**—Such an indictment for engaging in a combination and also for a conspiracy in restraint of interstate commerce considered, and *held*, to sufficiently describe the combination and conspiracy. *Ib.* 3—91
- 36. Duplicity.**—An indictment under the Sherman Law charging in separate counts a combination and a conspiracy in restraint of interstate trade and an attempt to monopolize a portion of such trade, all based on the same transactions, is not bad for duplicity as to either count, on the theory that each alleged overt act set out to support the charge of conspiracy is charged as a separate offense. *U. S. v. MacAndrews & Forbes Co.*, 149 F., 831. 3—93
- 37. Not Bad for Duplicity Because It Enumerates Different Means Employed.**—An indictment charging a combination in restraint of interstate commerce in violation of the Sherman Law is not bad for duplicity because it charges and enumerates different means adopted or different things done to accomplish the object of the combination. *U. S. v. Swift*, 188 F., 97. 4—295
- 38. Not Duplicitous Because of Reference to Other Counts.**—An indictment consisting of several counts was not duplicitous because of reference therein to other counts charging different offenses, only to give details of the offense charged in the counts objected to. *U. S. v. Patten*, 187 F., 673. 4—287
- 39. Allegation of But One Contract, or Combination, Permitted in One Count.**—The offense defined in section 1 of the Sherman Law permits in one count of an indictment an allegation of but a single transaction, to wit, the allegation of making one contract or engaging in one combination or conspiracy, although such a combination or conspiracy when once effected may be continuous. *U. S. v. Winslow*, 195 F., 580. 5—173
- 40. Construed, Held Not Duplicitous as Charging a Separate Conspiracy Against Each Competitor.**—Though such indictment

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- charged only a conspiracy against the competitors therein named, and though it did not allege that all of such competitors were in existence during all of the time to which it referred, it was not duplicitous, as charging a separate conspiracy against each competitor, as its underlying thought was that there was a generic conspiracy against all competitors, which took specific direction against those named as they came into existence, and continued against them as long as they remained in existence, and therefore it charged a single conspiracy. *Patterson v. U. S.*, 222 F., 616. 5—87
41. Same—Not Bad for Duplicity as Charging Conspiracy and Restraint of Trade, etc.—Such indictment was not bad for duplicity, as charging both a conspiracy in restraint of trade and an actual restraint of trade, as the overt acts described were alleged in support of the charge of conspiracy, and not as separate crimes. *U. S. v. King*, 229 F., 277. 6—418
42. For Conspiracy, Not Duplicitous, in Charging in Single Count, Violation of More Than One Law.—A charge in a single count of a conspiracy to violate two or more laws of the United States does not render the indictment duplicitous. *Knauer v. U. S.*, 237 F., 13. 6—693
43. Joinder of Corporations and Officers.—In an indictment under the Sherman Law, the offenses thereunder being made misdemeanors, all who aid in their commission may be charged as principals, and a corporation and its officers, who personally participate in committing the same, may be joined as defendants, although their acts may have been separate and not done at the same time. *Ib.* 3—94
44. Same—Joinder of Defendant in Indictment.—In an indictment against such corporations under the statute, their presidents, who are alleged to have personally made the arrangement and participated in carrying it out, may be joined as defendants, and can not claim immunity on the ground that they were not personally engaged in interstate commerce. *Ib.* 3—97
45. Joinder of Defendants.—A number of defendants may be charged jointly, under section 2 of the Sherman Law, with the crime of attempting to monopolize a part of interstate commerce. *Ib.* 3—95
46. May Join Counts for Conspiracy to Restrain, to Monopolize, and for Monopolizing.—In an indictment under the Sherman Law, counts for conspiracy in restraint of interstate commerce, for conspiracy to monopolize a part of such commerce, and for monopolizing a part of such commerce may be joined. *U. S. v. Patterson et al*, 201 F., 725. 5—42
47. Charging Combination and Restraint of Trade.—An indictment alleged that defendants did engage in a combination in form of trust, and entered a conspiracy in restraint of trade and

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commerce as follows: That defendant, T., and others, were engaged in the wholesale and retail meat business in competition prior to August 1, 1906, and that thereafter on August 23, they being engaged in a combination and form of trust, and in a conspiracy in restraint of trade in furtherance thereof, entered into a contract and formed defendant corporation, to which they transferred the business of each of them, agreeing not to again engage in the meat business in the city of Phoenix; that the combination and conspiracy was formed to carry out restrictions in trade and commerce, and to increase the price and prevent competition in the sale of fresh meats in such city, etc. *Held*, That the indictment did not charge defendants with making a contract which was in itself in restraint of trade and commerce, but that the contract was alleged only as one of the steps by which the "combination or conspiracy" was brought about, and as an overt act in furtherance thereof. *Tribolet v. U. S.*, 95 Pac. Rep., 87. 3—320

48. *Same*—Defects of Form—Statutory Offenses.—Where an indictment for combination or conspiracy in restraint of trade in violation of Sherman Law was uncertain as to some of its allegations, owing to the fact that the offense was first charged in the language of the statute, and the purposes and objects of the conspiracy were not fully stated until after the overt acts were described, the defect was one of form, and not of substance, not prejudicial to defendant, and therefore immaterial under U. S. Rev. St. §1025, providing that no indictment shall be quashed for a non-prejudicial defect of form. *Ib.* 3—323

49. *Same*.—The object of a combination or conspiracy in restraint of trade being unlawful both at common law and by statute, an indictment therefor was not objectionable for failure to allege the means by which the combination or conspiracy was to be accomplished. *Ib.* 3—323

50. *Alleging Conspiracy to Run a Cotton Corner*.—Since the operation of a scheme to corner the cotton market and thereby raise the price of cotton for the purpose of compelling a settlement by short speculators at an abnormally high price does not directly affect or restrain interstate commerce, there being no direct relation between prices and such commerce, an indictment alleging a conspiracy to run a cotton corner without any alleged intent to obstruct interstate commerce did not charge a violation of the Sherman Law. *U. S. v. Patten*, 182 F., 671. 4—284

51. *Since a conspiracy to monopolize is a conspiracy to create a monopoly*, an indictment for conspiracy to monopolize interstate trade and commerce in cotton in violation of the Sherman Law, was insufficient where it failed to show that the

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- conspiracy, if successfully carried out, would have resulted in a monopoly. *U. S. v. Patten*, 187 F., 672. 4—286
52. When Monopoly Does Not Exist.—An indictment against operators of a cotton corner for alleged violation of the Sherman Law charged that defendants had conspired to monopolize a part of the trade and commerce among the several States by becoming members of and engaging in an unlawful combination in the form of an agreement by which they were severally to purchase cotton to such an extent that, together, they would have enough to enable them to control the price of such cotton, and severally to demand arbitrary, excessive, and monopolistic prices for the same on the sale thereof by them respectively to spinners and manufacturers other than such conspirators. *Held* that, since no monopoly exists when individuals, each acting for himself, own large quantities of a commodity, the indictment was fatally defective as alleging only a scheme to demand monopolistic prices as the result of individual as distinguished from collective power. *Ib.* 4—286
53. An allegation that a conspiracy is "calculated" to produce a certain result is an allegation of a mere conclusion, and ineffective. *Ib.* 4—280
54. Sufficiency of.—An indictment for conspiracy to restrain interstate commerce in violation of the Sherman Law considered and held sufficient. *Steers v. U. S.*, 192 F., 1. 4—483
55. When Special Plea to Is Not Good.—A special plea of the statute of limitations is not good as against an indictment charging a conspiracy to restrain or monopolize trade, in violation of the Sherman Law, by improperly excluding a competitor from business, although the conspiracy is alleged to have been formed on a specified date, which was more than three years before the finding of the indictment, where such indictment, consistently with the other facts, alleges that the conspiracy continued to the date of its presentment. *U. S. v. Kissel*, 54 L. ed., 1168. 3—825
56. Quashed Because of Participation in Proceedings Before Grand Jury by Officers Not Entitled to Be Present.—Under Rev. St. §§ 363, 366, the former of which authorizes the Attorney General to employ counsel "to assist the district attorneys in the discharge of their duties," while the latter provides for the issuance of a commission to such attorneys as are specially retained by the department of justice "to assist in the trial of any case in which the Government is interested," which must be construed together and as referring to the same class of special assistants, the Attorney General was not authorized to appoint special assistants to a district attorney having the authority or right to appear before and

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participate in the proceedings of a grand jury, and the presence of two such attorneys specially appointed for a particular case and their examination of witnesses on whose testimony an indictment was returned, renders such indictment invalid. *U. S. v. Virginia-Carolina Chemical Co.*, 163 F., 76. 3—410

57. **Same—Where Questions Raised by Demurrer Are Doubtful, Decision of May Be Postponed.**—Where the questions raised by demurrer to an indictment are both intricate and doubtful, the demurrer may be overruled, and their decisions postponed until the trial on the merits. *U. S. v. Winslow*, 195 F., 581. 5—175

58. **Same—Must Allege Facts in Detail to Enable Court to Determine Whether Unlawful Methods Are to Be Used.**—The rule applied that an indictment for an illegal combination and conspiracy must necessarily allege facts in detail to enable the court to determine for itself whether or not the alleged combination or conspiracy is to be carried out by what are in truth unlawful methods. *Ib.* 5—177

59. **Same—Later Parts of May Incorporate Details of Matter Set Out In Earlier Parts of Indictment.**—The rule applied that later parts of an indictment may incorporate the details of matters properly set out in the earlier parts by reference, subject, however, to the rule that duplicity and repugnancy must be provided. *Ib.* 5—181

60. **May Incorporate in Subsequent Count Facts Alleged in Previous Count.**—It is proper to incorporate in a subsequent count, by reference, facts alleged in a previous one. *U. S. v. New Departure Mfg. Co.*, 204 F., 115. 5—157

61. **Is Sufficiently Specific Where It Avers Defendants Were Managing Officers and Controlled the Conduct of Business of a Corporation, and Describes Means Used to Suppress Competition.**—An indictment under the Sherman Law charging a number of defendants with a conspiracy in restraint of interstate trade and commerce, is sufficiently specific where it avers that defendants were the managing officers and agents of a corporation, who controlled the conduct of its business, and, while not naming particular instances specifically, describes the course of conduct and means used by the corporation, by which it compelled many competitors, some of whom are also named, to go out of business, or to sell their business to it. *U. S. v. Patterson et al.*, 201 F., 719. 5—34

62. **Same—Is Sufficient Where a General Charge of Restraint Is Made and Specific Acts of Restraint Are Alleged.**—An indictment for conspiracy in restraint of interstate commerce, in violation of the Sherman Law, charges an offense, where a general charge is made of restraint of trade in a particular

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article, pursuant to a conspiracy for the purpose, and specific acts are alleged, which, if true, show that defendants have restrained a part of that trade. *Ib.* 5—35

63. Same—For Monopolizing Is Sufficient Where It Alleges that Pursuant to a Conspiracy Defendants Monopolized Part of the Trade of a Competitor.—An indictment for monopolizing a part of interstate trade and commerce, in violation of the Sherman Law, sufficiently charges such monopoly, where it alleges that pursuant to a conspiracy therefor defendants monopolized a part of the trade in a single article entering into such commerce. *Ib.* 5—37

64. Construed to Allege That During the 20 Years of the Conspiracy There was No Time When One or More of the Competitors Were Not in Existence.—An indictment alleged that during the 20 years prior to the finding thereof many concerns had been engaged in the manufacture and sale of cash registers, a list of such concerns so far as known to the grand jurors, being therein set out; that defendants, the officers and agents of the N. Company, conspired to restrain the interstate trade and commerce carried on by such concerns other than the N. Company by unfair means, which wrongfully and irresistibly excluded others from engaging in such trade and commerce; that, intending to restrain the interstate commerce so carried on by such concerns, and compel them either to go out of business or sell their business and instrumentalities for carrying it on to the N. Company, so that it could, as in most cases it did, discontinue the business and the use of such instrumentalities, and thereby eliminate competition, they conspired to accomplish their objects by the means therein specified. *Held*, that it was not the intention of the indictment to allege that each of the competitors of the N. Company named was in existence during the entire 20 years preceding the indictment, nor to disclose when any of them were in existence, but only to allege that during such period there was no time when one or more of such competitors were not in existence. *Patterson et al v. U. S.*, 222 F., 615. 5—85

65. Same—Construed Not to Charge a General Conspiracy, But Only a Conspiracy Against the Competitors Named Therein.—An indictment alleged that many concerns had been engaged in the manufacture and sale of cash registers, a list of which, so far as known, was therein set out; that certain officers and agents of the N. Company had conspired in restraint of the interstate trade and commerce carried on by the several concerns thereinbefore named other than the N. Company; and that, intending to restrict and restrain the interstate commerce so carried on by "said concerns," and to compel them to go out of business or sell their business and instrumentalities to the N. Company, they had conspired to accomplish

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the object specified by the means therein set out, alleged to have been directed against "said concerns," "such concerns," etc. *Held*, that the indictment did not charge a general conspiracy against all competitors, but only a conspiracy against those therein named. *Ib.* 5—86

66. *Same*—Not Void for Uncertainty for Failure to Allege Which of Competitors Were in Existence During the 3-Year Period.—Though, under such indictment, a conviction could be had only in so far as the conspiracy charged existed within the period of limitation and as the competitors in existence within such period, the allegations as to its prior existence and its existence against competitors who had ceased to exist more than three years before the finding of the indictment being merely descriptive, it was not void for uncertainty for failure to allege which of the competitors were in existence within the three years. *Ib.* 5—87

67. *Same*—The Acts Charged Sufficiently Showed the Competitors Were Engaged in Interstate Commerce.—An indictment for conspiring to restrain the interstate commerce of defendants' competitors in cash registers alleged, concerning the competitors therein named, that they had sold the greater portion of the cash registers manufactured by them to users and dealers whose several places of business were situated in States other than those wherein the cash registers were manufactured by such concerns, respectively, and had consigned for sale other cash registers to dealers and to their own agents in such other States; that they had been shipping such cash registers to such users, dealers, and agents in such other States, and that in doing so each of such competitors had been engaged in trade and commerce among the several States. *Held*, that this sufficiently showed that the trade and commerce in which defendants' competitors were engaged was interstate. *Ib.* 5—88

68. *Same*—The Second Count Charging Monopoly Charged But a Single Offense and Was Not Duplicious.—An indictment in the first count charged a conspiracy by the officers and agents of the N. Company in restraint of the interstate commerce of its competitors therein named in the cash-register business during 20 years, and alleged that during such period the N. Company had done from approximately 80 per cent early in the period to approximately 90 per cent at the latter end thereof of the business of manufacturing cash registers, and that such officers and agents had conspired to accomplish their objects by the unlawful means therein specified. The second count charged that such officers and agents under the circumstances and by the means set forth in the first count had, by drawing to the N. Company, monopolized a part of the trade which otherwise would have been

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secured or retained by its competitors, and it made a part thereof the allegations of the first count descriptive of such trade and commerce, the concerns engaged therein, the means employed, and the knowledge, intent, and acts of the defendants. *Held*, that, while "monopolized," in the light of the context, meant "secured," the indictment charged defendants with monopolizing interstate commerce in cash registers, and not merely with monopolizing a part of such interstate commerce, and hence charged but a single offense, and was not duplicitous, as the offense of "monopolizing" consists not only in obtaining or securing a monopoly by wrongful acts, but in holding and maintaining it by such acts, and it appeared from the indictment that the N. Company had a practical monopoly, and that the wrongful means specified were employed to maintain and sold such monopoly.

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69. Same—Offense Need Not Be Charged in General Terms.—An offense intended to be charged in an indictment need not be charged expressly in general terms; it being sufficient if the facts alleged, if true, show the commission of the offense.

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70. Same—The Third Count Held Void for Uncertainty in Failing to Allege Which of Competitors Were in Existence During the Three-Year Period.—Where the first count of an indictment charging the officers and agents of the N. Company with conspiring to restrain the interstate commerce of the N. Company's competitors alleged that during 20 years many concerns had been engaged in a particular business, a list of such concerns, so far as known, being therein set out, without, however, alleging that all of the concerns named were in business during the entire 20 years, or alleging when any of them were so engaged in business, a count charging the defendants with monopolizing the trade which, but for their wrongful acts, would have been secured, or retained by the concerns "mentioned" in the first count as having carried on business during the three-year period of limitation, and another count alleging that such defendants, having drawn to the N. Company by the means "mentioned" in the first count that part of the interstate trade in cash registers which otherwise would have been secured or retained by the concerns mentioned in the first count as having carried on business before the period of three years, continued to hold and carry on its interstate business augmented by such wrongful means, and thereby monopolized interstate trade in cash registers, were void for uncertainty; the first count having "mentioned" no concerns as carrying on business within three years or before three years. *Ib.*

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- 71. Same—Third Count Held Insufficient in Not Alleging That the Trade and Commerce Secured and Held Was Not Covered by Defendants' Patents.**—A patentee and its officers and agents were not guilty of monopolizing interstate trade and commerce in cash registers, in holding such trade and commerce after securing it by wrongful means, if such trade and commerce was covered by its patents; and hence, where an indictment charged that the officers and agents of the patentee, having by wrongful means drawn to the patentee interstate trade and commerce which its competitors would otherwise have secured, continued to hold, conduct, and carry on its interstate business augmented by such wrongful means, and thereby monopolized interstate trade and commerce in cash registers, was defective, where, though it showed that some at least of the patentee's patents had not expired, it did not allege that the trade and commerce so secured and held was not covered by those patents. *Id.* 5—98
- 72. Same—Third Count Also Held Defective in Not Making Allegations of the First Count as to Venue a Part Thereof.**—Where the first count in an indictment charged a conspiracy to restrain the interstate commerce of defendants' competitors, another count, alleging that defendants, having by the means and under the circumstances and conditions described in the first count drawn to their company a part of the interstate commerce in cash registers which otherwise would have been secured or retained by its competitors, continued to carry on the interstate business of their company so augmented, and thereby monopolized interstate commerce in cash registers, did not make the allegations of the first count as to venue a part thereof. *Id.* 5—101
- 73. Charging That Defendants Were Engaged in a Conspiracy, and in Furtherance Thereof Had Committed Certain Acts, Not Defective, on the Theory the Acts Were in Harmony with a Lawful Purpose.**—Where an indictment for violation of § 1 of the Sherman Law charged that defendants were engaged in a combination and conspiracy to monopolize and control the trade in and manufacture and sale of coaster brakes in the United States, and that for this purpose defendants, in combination with an association, had committed certain specified acts tending to restrain competition among themselves, including the assignment of pretended license rights, tending toward the establishment of uniform prices for the products, and an agreement between them for non-competitive discounts to jobbers, dealers, etc., all of which were alleged to have been done with an unlawful intent to control the market, the indictment was not defective, on the theory that the acts charged were in perfect harmony with a lawful purpose. *U. S. v. New Departure Mfg. Co.*, 204 F., 112. 5—153

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- 74. Same—Charging Defendants Were Engaged in a Conspiracy, Followed by Allegation of Overt Acts, Not Defective for Failure to Charge Directly the Formation or Existence of Conspiracy.**—The phrase "engage in such combination or conspiracy," as used in § 1 of the Sherman Law, is used in a broad sense, and includes not such persons as initiate a conspiracy, but also those who afterwards engage therein; and hence an indictment charging that defendants were engaged in a conspiracy among themselves to control and monopolize interstate commerce in the manufacture and sale of coaster brakes among the several States, followed by an allegation of overt acts tending to effectuate the conspiracy, was not defective for failure to charge directly the formation and existence of the conspiracy, the words "engage in," as so used, signifying to embark in, take part in, or enlist in, meaning substantially the same thing as to conspire. *Ib.* 5—151
- 75. Charging Conspiracy, and That Defendants Committed the Unlawful Acts Specified Within Three-Year Period, Sufficient.**—Where an indictment charging a conspiracy in restraint of interstate trade or commerce in violation of the Sherman Law alleged that defendants continuously, during the period from July 1, 1907, to January 8, 1912, committed the unlawful acts specified, it sufficiently alleged that an offense was committed within the three-year statute of limitations. *Ib.* 5—157
- 76. Charging Agreement by 86 Per Cent of Milk Buyers in Boston to Fix and Maintain Prices to Be Paid for Milk, Held to Show a Combination Unreasonably Extensive and Illegal.**—An indictment alleging that the defendants, who bought 86 per cent of the milk sold in specified country districts by the producers there, for shipment to Boston and vicinity and Worcester, engaged in an unlawful combination in undue restraint of trade by agreeing upon the prices which they would pay for milk at the country points, thereby eliminating competition as to price between the defendants, *Held* to show a combination which was prima facie unreasonably extensive and therefore illegal. *U. S. v. Whiting et al.*, 212 F., 471. 5—454
- 77. Same—Not Defective for Failing to Allege What Proportion of Milk Purchased Came from Outside Massachusetts.**—An indictment, which charges a combination in restraint of interstate trade in milk, and which alleges that defendants combined to eliminate competition between themselves as to the price of milk purchased for resale in Boston and Worcester, and that the milk purchased by them was purchased in Maine, Vermont, New Hampshire, Connecticut, and Massachusetts, is not defective for failing to allege a restraint of interstate trade in milk, merely because it does not allege what propor-

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tion of the milk purchased under the combination came from outside Massachusetts, since the milk purchased in Massachusetts was purchased for the purpose of adding it to the milk forming a part of interstate commerce. *Ib.* 5—454

78. Same—Must Allege Facts Warranting a Finding that Restraint Was Unreasonable.—An indictment charging a conspiracy in restraint of trade in violation of the Sherman Law must allege facts warranting a finding that the restraint was unreasonable, and an indictment charging a conspiracy in restraint of trade in milk, which does not show the percentage of milk bought by defendants for shipment and sale in designated markets, nor allege facts from which it could be inferred that defendants either controlled or were dominating factors in any branch of the milk business, was demurrable for failing to allege an unreasonable restraint of trade. *Ib.* 5—465

79. When Specific Intent Need Not Be Charged.—Persons purposely engaging in a conspiracy which necessarily and directly produces the result which a prohibitory statute is designed to prevent are, in legal contemplation, chargeable with intending to produce that result; and so held that if the details of the conspiracy are alleged in the indictment, an allegation of specific intent to produce that natural result is not essential. *U. S. v. Patten*, 226 U. S., 543. 4—759

80. Quere, Whether an Indictment Will Lie For a Contempt of a Court of the United States. *Gompers v U. S.*, 233 U. S., 611. 4—799

81. Same—Not Necessary to Allege or Prove All Conspirators Proceeded Against Traders.—It is not necessary for an indictment under the Sherman Law to allege or prove that all the conspirators proceeded against traders. *Nash v. U. S.*, 229 U. S., 379. 5—240

82. Same—On Trial, Need Not Prove Use of Every Means Alleged.—Where the indictment under the Sherman Law alleges numerous methods employed by the defendants to accomplish the purpose to restrain trade, it is not necessary, in order to convict, to prove every means alleged, but it is error to charge that a verdict may be permitted on any one of them when some of them would not warrant a finding of conspiracy. *Ib.* 5—241

83. Charging Conspiracy in Appointing Blacklisting Committee, to Prepare List of Undesirable Persons, and Refusing to Deal with Them, Sufficiently Alleged That Conspiracy Was Entered Upon, etc.—An indictment alleged that defendant entered into a conspiracy that they should appoint an executive committee, that the executive committee should constitute a listing committee, that the listing committee should cause a list of undesirable persons to be prepared and published, and that

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defendants should thereafter refuse to have any farther business dealings with such blacklisted persons, that the defendants did appoint a listing committee, that in pursuance of the conspiracy and to effect its object the committee blacklisted a person named, and defendants refused to deal with him, thereby restraining him from carrying on interstate trade. *Held*, that this sufficiently alleged that the conspiracy was actually entered upon and engaged in, and the use of the word "should" did not render it insufficient in this respect. *U. S. v. King*, 229 F., 277. 6—417

84. Same—Charging Conspiracy Entered Into at Boston, and That in Pursuance Thereof Defendants Did Certain Acts, Held Sufficient as Alleging Crime Committed in That District.—An indictment for a conspiracy in restraint of trade alleged that at Boston, in the district of Massachusetts, the defendants therein named unlawfully, etc., entered into a conspiracy therein described, and that, in pursuance of such conspiracy and to effect its object, they did certain acts. *Held*, that this sufficiently alleged a crime committed by each of the defendants within the district of Massachusetts. *Ib.* 6—418

85. Charging That by Reason of Conspiracy Blacklisted Dealers Could Not Secure Potatoes to Supply Their Trade, Except from Conspirators, Held Sufficient.—Where an indictment against the members of a potato shippers' association, the members of which controlled 75 % of an especially desirable variety of potatoes, for conspiracy in restraint of trade, alleged that persons engaged in buying, selling, or dealing in such potatoes could not obtain sufficient quantities to meet their legitimate demand unless potatoes were supplied them by such members, it sufficiently appeared that it was intended to restrain the trade of persons blacklisted by the association, as the refusal to do business with them would restrain their trade, and the intent must be presumed from the act itself. *Ib.* 6—420

86. The Object of, Is to Furnish Accused With a Description of the Charge Against Him, as Well as to Inform the Court of the Facts Alleged.—The object of an indictment is, first, to furnish accused with a description of the charge against him which will enable him to make his defense, and to avail himself of his conviction or acquittal for protection against a further prosecution for the same charge, as well as to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. *U. S. v. Rintelen*, 233 F., 796. 6—528

87. Same—Charging that Defendants Conspired to Interfere with Commerce, etc., by Organizing Strikes, etc., Is Sufficient to Charge an Offense, etc.—An indictment charging that defendants, in violation of § 1 of the Sherman Law, making

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Illegal every conspiracy in restraint of trade or commerce among the several States or with foreign nations, conspired to interfere with commerce between American manufacturers of war munitions, who were too numerous to be named, and the countries of Great Britain, France, Russia, and Italy, by organizing strikes, fomenting labor troubles, and by other means hindering the production of such munitions, as well as their transportation, is sufficient to charge an offense apprising the conspirators of the charge against them and of the means by which they intended to carry out their conspiracy.

Ib.

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88. Same—Which Lacks a Statement of Essential Facts, Can Not Be Aided by a Bill of Particulars.—A bill of particulars can not aid an indictment which lacks a statement of the essential facts to constitute the offense charged, but is appropriate where there is a good indictment, and defendants desire to be more particularly informed as to matters which will aid them in their defense. *Ib.*

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89. Where There Is Identity of Parties and of Subject Matter Indictments Charging Violations of Different Laws May Be Consolidated and Tried Together.—Defendants were charged with a conspiracy to do acts in restraint of trade, in violation of the Sherman Law, and also with a conspiracy, under section 37 of the Criminal Code, to violate section 13 thereof, declaring that whoever, within the territory or jurisdiction of the United States, begins or sets on foot, or provides or prepares the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state or people with whom the United States are at peace, shall be punished. The indictment under the Sherman Law charged no overt act, but charged that the conspiracy was entered into within the district, while the indictment under section 37 charged the commission of an overt act within the district, although the contemplated activities would take a wide range. Both conspiracies were directed against the munitions trade of the United States with France, Russia, England, and Japan, and defendants' purpose was to prevent the shipment or transportation of munitions of war to such countries, either by destroying munition plants in the United States or destroying ships and railroads outside of the United States engaged in carrying munitions. *Held* that, as there was an identity of parties and of subject matter, and both conspiracies were entered into in the same district, though defendants were indicted under the Sherman Law for their conspiracy against munition plants in the United States, the indictments should be consolidated and tried together for convenience. *U. S. v. Bopp*, 237 F., 285.

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90. Which Alleges Facts Sufficient in Law to Sustain a Conviction, and Furnishes Accused Such Description of Charge as Will Enable Him to Make His Defense, Is Sufficient.—Under Rev. Stat., section 1025, which provides that no indictment shall be deemed insufficient by reason of any defect or imperfection of form only, which shall not tend to the prejudice of the defendant, an indictment is sufficient which contains a sufficient accusation of crime, and alleges facts which are sufficient in law to sustain a conviction, and which furnish the accused with such description of the charge against him as will enable him to make his defense, and avail himself of his conviction or acquittal for protection against future proceedings for the same offense. *Knauer v. U. S.*, 237 F., 12. 6—691
91. Same—For Conspiracy to Violate a Law, Need Not Set Out, With Particularity, Law to Be Violated.—In an indictment for conspiracy to violate the laws of the United States, the conspiracy itself is the gist of the offense, and the law to be violated need not be set out with the particularity required if its direct violation were charged. *Ib.* 6—691
92. Same—For Conspiracy, Need Not Aver That Defendants Were Engaged in Interstate Commerce, Nor an Overt Act, Nor That It Was Successful.—An indictment for conspiracy in restraint of interstate trade or commerce, under the Sherman Law, need not aver that defendants were engaged in interstate commerce, nor the doing of an overt act, nor that the conspiracy was successful. *Ib.* 6—692
93. Same—Must Aver Particulars of Offense, When Definition of Includes Generic Terms.—When the definition of an offense, whether it be by common law or by statute, includes generic terms, it is not sufficient that an indictment charge the offense in the same generic terms, but it must aver the particulars. *Ib.* 6—693
94. Combination of Manufacturers Making Non-Competing Machinery Not an Offense Under the Sherman Law.—The district court rightly held that the counts under review of the indictment against various persons for combining their businesses of manufacturing patented machines for making different parts of shoes, and not competing with each other, did not constitute an offense under the Sherman Law. *U. S. v. Winslow*, 227 U. S., 217. 5—212
95. Held Insufficient on Demurrer, as to Certain Defendants, Involves a Construction of the Indictment, Not Reviewable in Supreme Court at Instance of the Government.—A decision of a Federal district court on demurrer, that the averments of an indictment charging violations of the Sherman Law were not sufficient to connect the individual defendants with the offense

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charged, is a construction of the indictment, and may not be reviewed in the Supreme Court at the instance of the Government. *U. S. v. Pacific & Arctic R. & N. Co.*, 57 L. Ed., 742.

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96. **Against Cement Trust, Held Sufficient.**—An indictment alleged that various corporations or companies located in Northern and Southern California, Oregon, and Washington were manufacturing cement for the general trade and engaged in interstate commerce; that they were represented by certain officers and managers, who promoted and carried on the business; that such officers and managers knowingly, by concerted action, carried on the business of such concerns without competition as to the price of their cement, and by the same concerted action prevented the Southern California company from selling or consigning cement for sale in Washington or Oregon, the Northern California companies from selling or consigning for sale in Washington, the Washington company from doing the same in Oregon or California, and the Oregon company as to Washington and California, and had prevented the Northern California and Oregon companies from selling in Oregon otherwise than upon arbitrary and non-competitive prices fixed and agreed upon in advance; and that by reason thereof consumers had been compelled to pay arbitrary prices greatly in excess of the price at which they would have secured such cement, but for the combination. *Held*, that the indictment was sufficient, as it would enable the defendants to prepare their defense and to defeat any subsequent prosecution for the same offense, and enable the court to determine that a combination existed, that defendants were engaged therein, and that the restraint of trade was undue or unreasonable. *U. S. v. Cowell*, 243 F., 732. 6—1006
97. **Same—Allegations of, as to Venue, Held Sufficient.**—The objection that no venue was laid in the above described indictment, held without merit. *Ib.* 6—1007
98. **Same—Alleging Parties Engaged in Combination Between Specified Dates, Sufficiently Alleges Time of Offense.**—An indictment for combining and engaging in a monopoly in restraint of interstate commerce sufficiently alleges the time of the offense by alleging that the parties were engaged in the unlawful combination or contract between specified dates, as the offense is a continuing one and the parties are transgressing the statute while engaged in the operation of the design or in carrying it into effect. *Ib.* 6—1005
99. **Same—For Engaging in a Monopoly, Must Give Particulars.**—An indictment for combining and engaging in a monopoly in restraint of interstate trade and commerce must give particulars, and not rely simply on the words of the statute. *Ib.*

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INDIRECTLY. See INCIDENTALLY.

INFRINGEMENT OF PATENTS. See PATENTS.

INJUNCTIONS.

1. **Must Be Brought by the Government.**—The Sherman Law does not authorize the bringing of injunction suits or suits in equity by any parties except the Government. *Blindell v. Hagan*, 54 F., 40. 1—106
Case affirmed, 56 F., 696 (1—182).
2. **Same.**—The intention of the Sherman Law was to limit direct proceedings in equity to prevent and restrain such violations of that law as cause injury to the general public, or to all alike, merely from the suppression of competition in trade and commerce among the several States and with foreign nations, to those instituted in the name of the United States, under section 4 of the act, by district attorneys of the United States, acting under the direction of the Attorney-General; thus securing the enforcement of the act, so far as such direct proceedings in equity are concerned, according to some uniform plan, operative throughout the entire country. *Minnesota v. Northern Securities Co.*, 194 U. S., 48. 2—533
3. **The right to bring suits for injunction under section 4 of the Sherman Law is limited to suits instituted on behalf of the Government.** *Greer, Mills & Co. v. Stoller*, 77 F., 1. 1—620
[But see Section 16 of the Clayton Law.]
4. **Suits in Equity to Restrain Can Be Brought Only by the United States.**—An agreement or combination in violation of the Sherman Law can not be declared null and void in equity at the suit of retail dealers engaged in purchasing and selling the product of a company sought to be compelled to join such combination, but having no contract with it for the purchase of such product. Such a result can only be accomplished at the suit of the United States. *Leonard v. Abner-Drury Brewing Co.*, 25 App. (D. C.) Cases, 161. 3—14
5. **When Injunction Will Lie at the Suit of Party Injured.**—But where such retail dealers show that they have established a profitable business in selling the product of the company so sought to be coerced, which is unwilling to advance the price of the product, but wishes to continue to sell to them at the lower price, but, intimidated by the threats of the association, such company is about to yield to its demands, and will do so unless restrained, in which event there will be an advance in prices, and such dealers may thereupon be allotted as customers to some other member of the trust against their will, and be unable to purchase the product they have been dealing in even at the advanced price, and their business will be so destroyed—an injunction will lie at

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their suit to prevent the doing or continuing of the wrongful acts. the remedy at law, if any, even under the statute giving threefold damages, being inadequate, and consequential damages, such as loss of trade and profits and failure of credit and business not being ordinarily recoverable at law. *Ib.*

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6. Combinations may be enjoined if the objects of the association are such as to violate the Sherman Law prohibiting combinations in restraint of interstate commerce, and combinations and conspiracies to monopolize interstate commerce. *Monarch Tobacco Works v. American Tobacco Co.*, 165 F., 779.

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7. Same—Bill by Stockholder.—A bill by a stockholder of a corporation, who is also an officer and director, to enjoin the voting of stock by another corporation for the alleged purpose of changing the management in its own interest and creating an illegal monopoly to the detriment of the minority stockholders, shows such a special interest in complainant as distinct from the public and such threatened irreparable injury to his rights as to justify the granting of a preliminary injunction. *Bigelow v. Calumet & Hecla Mining Co.*, 155 F., 880.

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8. Preliminary Injunction—Grounds.—The bill of a stockholder and supporting affidavits held to make a showing which entitled him to a preliminary injunction to restrain defendant from voting stock to change the officers and management of the corporation pending a hearing on the merits. *Ib.*

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9. Member Who Has Withdrawn from Combination Not Subject to Suit.—A member of a combination in restraint of interstate commerce, in violation of the Sherman Law, who has in good faith withdrawn from such combination, is not subject to a suit for injunction under section 4 of the act; nor, if such member is a corporation, is the fact that a minority part of its stock is owned by members of the combination sufficient to sustain such a suit, in the absence of proof that such ownership is employed to aid the combination. *U. S. v. du Pont, etc., Co.*, 188 F., 129.

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10. Same—Minority Stockholders Not Subject to Suit.—A minority stockholder in a corporation, who is not an officer and takes no part in the management of its business, is not subject to a suit for injunction under the Sherman Law, because the corporation may be a party to a contract or combination to restrain or monopolize interstate commerce. *Ib.*
11. Inducing Violation of Contracts—Sufficiency of Bill.—A bill by a manufacturer of proprietary medicines, sold only to wholesale and retail druggists having direct contracts with complainant, to enjoin defendant from inducing such cus-

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tomers to break such contracts by selling to defendant in violation of their terms, is sufficiently certain, although it does not specify the customers who have so been induced to violate their contracts, where it shows that, before reselling the medicine so procured, defendant removes the cartons, labels, and serial numbers from the bottles, so that they can not be traced to any particular customer. *Dr. Miles Medical Co. v. Jaynes Drug Co.*, 149 F., 840. 3—106

12. Same.—Such a bill states a cause of action for an injunction where the contracts sought to be protected are lawful. *Ib.* 3—107

13. For Simulation of Labels and Packages of Competitor.—Complainant and its predecessors in business from about 1880 made and sold a brand of plug tobacco known as "Schnapps," and in 1894 commenced placing upon the plugs tin tags of rhomboid shape, and having a dark background with the word "Schnapps" thereon in red letters slanting backward, which tag, as shown by the evidence, was novel and distinctive. During the following 12 years nearly 800,000,000 of such tags were used, and also several millions of advertisements, hangers, etc., were sent out having thereon pictures of such tag which came to be known throughout the Southern States as the distinctive mark of the Schnapps brand. Many of the retail customers were unable to read, but identified complainant's tobacco entirely by the tag, and the size and shape of the plug. Later defendant put upon the market a cheaper grade of tobacco in plugs of the same size and shape, and with tags thereon of the same size, shape, style, and color; the only difference being in the name which was "Traveller" instead of "Schnapps," which difference could not be distinguished at a short distance. The evidence showed that the simulation was intended to, and did in fact, deceive customers who intended to buy complainant's product. *Held*, that such simulation constituted unfair competition and entitled complainant to an injunction. *Reynolds Tobacco Co. v. Allen Bros. Tobacco Co.*, 151 F., 833. 3—154

14. The fourth section of the Sherman Law invests the Government with full power and authority to bring a suit to set aside an agreement between competing railroads for the regulation of rates and to have an association founded for that purpose dissolved and its members enjoined from carrying out the terms of the agreement. *U. S. v. Trans-Missouri Ft. Assn.*, 166 U. S., 290. 1—648

15. Jurisdiction of Circuit Courts.—The circuit courts have jurisdiction under the Sherman Law, to issue injunctions to restrain and punish violations of that act. *U. S. v. Agler*, 62 F., 824. 1—294

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16. **Same—Technical Defects in Bill.**—That a bill for such injunction contains no prayer for process, this being a mere technical defect, although it renders the bill demurrable, does not affect the jurisdiction of the court or render the injunction issued thereon void. *Ib.* 1—297
17. **Same—Defendants Not Named in Bill, Nor Served with Subpœna.**—An injunction for such purpose becomes binding, as against one not named in the bill, and not served with subpœna, when the injunction order is served on him as one of the unknown defendants referred to in the bill. *Ib.* 1—299
18. **Same—Proceedings to Punish Violation.**—An information to punish violation of such an injunction order which fails to allege that the order was a lawful one, in the language of the statute, or that the person charged, not named in the order, was one of the unknown parties referred to therein, or that, either by his words or his acts, he was engaged in aiding the common object with other members of the alleged combination, lacks the necessary certainty. *Ib.* 1—300
19. **Equity Jurisdiction—Power to Enjoin—Right to Jury.**—The power given by section 4 of the Sherman Law, to circuit courts "to prevent and restrain violations" of the act, is not an invasion of the right of trial by jury, as the jurisdiction so given to equity will be deemed to be limited to such cases only as are of equitable cognizance. *U. S. v. Debs*, 64 F., 724. 1—323
See also U. S. v. Elliott, 64 F., 27 (1—311), and *U. S. v. Agler*, 62 F., 824 (1—294).
20. **Obstruction of Mails—Jurisdiction of Circuit Court.**—The circuit court has power to issue its process of injunction upon a complaint which clearly shows an existing obstruction of artificial highways for the passage of interstate commerce and the transmission of the mails, not only temporarily existing, but threatening to continue. *In re Debs*, 158 U. S., 564. 1—565
21. **Same—Violation of Injunction—Contempt.**—Such an injunction having been issued and served upon the defendants, the circuit court had authority to inquire whether its orders had been disobeyed, and when it found that they had been disobeyed, to proceed under Revised Statutes, section 725, and to enter the order of punishment complained of. *Ib.* 1—597
22. **Same—Habeas Corpus.**—The circuit court having full jurisdiction in the premises, its findings as to the act of disobedience are not open to review on *habeas corpus* in this or any other court. *Ib.* 1—598
23. **Enforcement—Contempt.**—The proceeding by injunction is of a civil character, and may be enforced by proceedings in contempt. *Ib.* 1—597

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24. Such proceedings are not in execution of the criminal laws of the land. *Ib.* 1—597
25. Penalty for Contempt no Defense in Criminal Action.—The penalty for a violation of an injunction is no substitute for, and no defense to, a prosecution for any criminal offense committed in the course of such violation. *Ib.* 1—597
26. Obstruction of Railroads.—An injunction will lie under section 4 of the Sherman Law to restrain a combination whose professed object is to arrest the operation of the railroads whose lines extend from a great city into adjoining States until such roads accede to certain demands made upon them, whether such demands are in themselves reasonable or unreasonable, just or unjust. Such a combination is an unlawful conspiracy in restraint of trade and commerce among the States, within the meaning of section 4 of that act. *U. S. v. Elliott*, 62 F., 801. 1—262
Demurrer overruled, 64 F., 27 (1—311).
27. Same—Power of Congress to Authorize.—Section 4 of the Sherman Law, which provides that the circuit courts of the United States have jurisdiction to restrain combinations and conspiracies to obstruct and destroy interstate commerce, before such objects are accomplished, is not void for want of power in Congress to authorize such proceedings. *U. S. v. Elliott*, 64 F., 27. 1—311
28. Injunction Order—Persons Not Named in Bill.—Under section 5 of the Sherman Law, an injunction order in an action to enjoin an illegal conspiracy against interstate commerce may provide that it shall be in force on defendants not named in the bill, but who are within the terms of the order, where it also provides that it is operative on all persons acting in concert with the designated conspirators, though not named in the writ, after the commission of some act by them in furtherance of the conspiracy, and service of the writ on them. *Ib.* 1—322
29. Strike—Interference with Interstate Commerce.—Where an injunction is asked against the interference with interstate commerce by combinations of striking workmen, the fact that the strike is ended and labor resumed since the filing of the bill is no ground for refusing the injunction. The invasion of rights, especially where the lawfulness of the invasion is not disclaimed, authorizes the injunction. *U. S. v. Workingmen's Amalg. Council*, 54 F., 994. 1—110
Case affirmed, 57 F., 85 (1—184).
30. Injunction in Northern Securities Case no Invasion of States' Rights to Create Corporations.—The enforcement of the provisions of the Sherman Law by a Federal court decree enjoining a corporation organized in pursuance of a combination of stockholders in two competing interstate rail-

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way companies for the purpose of acquiring a controlling interest in the capital stock of such companies, from exercising the power acquired by such corporation by virtue of its acquisition of such stock, does not amount to an invasion by the Federal Government of the reserved rights of the States creating the several corporations. *Northern Securities Co. v. United States*, 193 U. S., 197 (48 L. ed., 679). 2—342

31. *Same.*—A Federal court, by its decree in a suit instituted under the authority of section 4 of the Sherman Law, to prevent and restrain violations of the act, may properly enjoin a corporation organized in pursuance of a combination of stockholders of two competing interstate railway companies for the purpose of acquiring a controlling interest in the capital stock of such companies, from acquiring any further stock therein, from voting such stock as it then holds or may subsequently acquire, and from exercising any control over the railway companies by virtue of its holdings, and may restrain the railway companies from permitting or suffering any such action on the part of the stockholding corporation, and from paying any dividends on account of the stock held by it. 2—489

32. *Allowance—Comparative Hardship or Inconvenience.*—In an application for a preliminary injunction to prevent the Northern Securities Company from parting with, disposing of, transferring, assigning, or distributing the stock of the Northern Pacific Railway Company, or any part thereof, by reason of the decision of the Supreme Court in the Northern Securities Company case (193 U. S., 197), during the pendency of a suit to determine the rights of the Northern Pacific Company in regard to such return or distribution, *Held*, That the preliminary injunction should issue, regard being had to the comparative hardship or convenience to the respective parties resulting from the awarding or denial of the injunction. *Harriman v. Northern Securities Co.*, 132 F., 464. 2—587

Reversed by Circuit Court of Appeals, 134 F., 331 (2—619).

Action of Circuit Court of Appeals affirmed by Supreme Court, 197 U. S., 244 (2—669).

33. *Same.*—Where, in a doubtful case, the denial of a preliminary injunction would, on the assumption that the complainant ultimately will prevail, result in greater detriment to him than would, on the contrary assumption, be sustained by the defendant, through its allowance, the injunction usually should be granted. *Ib.* 2—604
34. *Same.*—The balance of convenience or hardship, ordinarily is a factor of controlling importance in cases of substantial doubt

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existing at the time of granting or refusing the preliminary injunction. *Ib.* 2—804

35. Same.—Such doubt may relate either to the facts or to the law of the case, or to both. It may equally attach to, or widely vary in degree as between, the showing of the complainant and of the defendant, without necessarily being determinative of the propriety of allowing or denying the injunction. *Ib.* 2—805

36. Same—Preservation of Fund.—Where the sole object for which an injunction is sought is the preservation of a fund in controversy, or the maintenance of the status quo, until the question of right between the parties can be decided on final hearing the injunction properly may be allowed, although there may be serious doubt of the ultimate success of the complainant. *Ib.* 2—805

37. Same.—While the consideration that an appeal does not lie from an interlocutory decree denying a preliminary injunction is entitled to no weight where, on the application, it clearly appears that the complainant can not prevail on the final hearing, it is often of controlling importance where, on such application, there is room for reasonable doubt as to the ultimate result. *Ib.* 2—817

38. Preliminary Injunctions—Where Material Allegations Are Denied.—Where the material allegations of a bill filed by the United States against various coal companies, under the Sherman Law, to enjoin their combination in restraint of trade, are denied by defendants' affidavits, a preliminary injunction will not be granted, as plaintiff gives no indemnifying bond in case the injunction should be dissolved. *U. S. v. Jellico Mtn. Coke & Coal Co.*, 43 F., 898. 1—1

39. Injunction Pendente Lite—Evidence.—Evidence that, by reason of the action of a combination of persons, the crew left complainants' ship as she was about to sail, and that another crew could not be procured for nine days, and then only with the assistance of the police authorities and the protection of a restraining order, while other vessels in the vicinity had no difficulty in getting crews, is sufficient to authorize the court to enjoin interference with the business of the complainants by such combination pendente lite. 54 F., 40, affirmed. *Blindell v. Hagan*, 56 F., 696. 1—188

40. Restraining Orders—May Issue Without Notice.—Under section 4 of the Sherman Law, a restraining order may be issued without notice, under the circumstances sanctioned by the established usages of equity practice in other cases. *U. S. v. Coal Dealers' Assn. of Cal.*, 85 F., 252. 1—749

41. Preliminary Injunctions—Review.—Where the opinion of a circuit court in granting a preliminary injunction shows that

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the judge regarded as of controlling importance the fact that an order denying the injunction would not be reviewable by appeal, the rule that the appellate court will not interfere with the exercise of the discretionary power of the court of first instance unless there is strong reason for it does not apply, and the question of the right to the injunction will be determined on the merits. *Northern Securities Co. v. Harriman*, 134 F., 331. 2—618

Reversing 132 F., 464 (2—587).

42. **Same—Should Not Be Enjoined from Distributing Assets.**—Defendant corporation having been adjudged an illegal combination in restraint of interstate commerce, and enjoined from voting or receiving dividends on certain railroad stock which it owned, but permitted to transfer the same to its stockholders, a plan adopted by its directors and stockholders to distribute the same pro rata among all its stockholders was equitable, and its execution should not be enjoined. *Ib.* 2—627
43. **Same—Dissent.**—It is a proper exercise of discretion for a court to grant a preliminary injunction where the bill and evidence present a prima facie case and raise important and doubtful questions of law and fact, and, unless the injunction is granted to preserve the status quo until the hearing, the suit would be ineffective; and an order for an injunction, granted on such grounds after the court has given due consideration to the balance of inconvenience and injury which may result to one party or the other, should not be reversed by an appellate court before the case has been finally heard and determined by the court below on full proofs. Per Gray, circuit judge, dissenting. *Ib.* 2—631
44. **Review of Order Granting Temporary Injunction.**—The Circuit Court of Appeals will not reverse an interlocutory order granting or continuing a temporary injunction unless it is clearly shown that the same was improvidently granted and is hurtful to the appellant. *Workingmen's Amalg. Council v. U. S.*, 57 F., 85. 1—184
45. **On Motion for Preliminary, Only Necessary to Show Cause of Action Exists, and That Irreparable Injury Will Follow Unless Protected.**—On motion for a preliminary injunction it is only necessary to show that a cause of action exists and that irreparable injury will be done complainants unless they are protected. *Irving v. Joint Council of Carpenters, etc.*, 180 F., 900. 5—388
46. **Same—On Bill to Enjoin, Injunction Is Properly Continued Pending the Action.**—On a bill to enjoin interference with an employer, an injunction is properly continued pending the action, restraining individual defendants from calling out employees in other trades who have no grievances against their em-

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- players, and from notifying owners, builders, and architects and others that they are likely to have their operations suspended if they use complainant's products. *Ib.* 5—385
47. Violation of, Not Excusable Because of Lack of Intent to Do So, or Because of Ignorance of Its Terms.—Violations of an injunction decree were not excusable because those violating it did not intend to violate it or were ignorant of the meaning of its terms. *U. S. v. Southern Wholesale Grocers' Ass'n*, 207 F., 444. 5—326
48. May Be Granted Restraining Members of Labor Union from Using Violence and Coercion in Inducing Employees to Join the Union and to Strike.—An injunction may be properly granted restraining members of a trade-union from using violence, intimidation, and coercion to induce employees to join the union and to strike, but they may not be lawfully restrained from using persuasion and other peaceable methods to that end, or from aiding employees by furnishing them money from a relief fund. *Bittner v. West Va.-Pittsburgh Coal Co.*, 214 F., 716. 5—636
49. Courts Can Enjoin Agreement to Act in Concert on Publication of Signal Words "Unfair" and "We Don't Patronize."—An agreement to act in concert on publication of a signal makes the words used as the signal amount to verbal acts, and, when the facts justify it, the court having jurisdiction can enjoin the use of the words in such connection; and so held as to words "unfair" and "we don't patronize" as used in this case for the purpose of continuing a boycott. *Gompers v. Bucks Stove & Range Co.*, 221 U. S., 439. 4—780
50. Will Be Granted an Employer, Where Members of a Labor Union, On a Strike, Used Violence in Interfering with Complainant's Business and Access to Its Ships.—Section 20 of the Clayton Law declares that no restraining order or injunction shall be granted in any case between an employer and employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning the terms or conditions of employment, unless necessary to prevent irreparable injury to property or property rights, and that no such restraining order shall prohibit any person or persons, whether singly or in concert, from terminating any employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceable means to do so. Employees of complainant, a ship company, engaged as a common carrier, which also carried the mails, struck, and defendants, composing the union of which they were members, picketed the wharves of complainant and intimidated other laborers from accepting complainant's offers of employment. Defendants threw rocks on the wharves, and in other ways interfered by violence with complainant's

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- business and access to its ships. Interstate commerce act of February 4, 1887, section 3 (24 Stat., 380), and section 10, as amended by the act of March 2, 1889, section 2 (25 Stat., 875), respectively declare that every common carrier subject to the provisions of the act shall afford reasonable facilities for the exchange of traffic between their respective lines and for the receiving, forwarding, and delivering of passengers and property to and from their several lines, and that any common carrier which shall willfully omit to do any act or thing required to be done shall be guilty of a misdemeanor. *Held*, that, though defendants were authorized under the statute to persuade third persons to decline complainants' offers of employment and to refuse to deliver goods to complainant or to patronize it, their interference with complainant's transportation business by violence was unlawful and will be enjoined, as it would not only expose complainant to loss, but to prosecution for violations of law. *Alaska S. C. Co. v. Inter. Longshoremen's Ass'n*, 236 F., 971. 6—688
51. **Restraining Interference by Pickets with Operation of Telephone Company, Held Sufficient under Clayton Law.**—An injunction issued in a suit by the subscribers of a telephone company whose employees were on a strike, to compel the company to perform its contracts, which restrained all persons from doing any act which may interfere in any respect with the performance of those duties, is, in view of the fact that the interests of the public are paramount to the interests of the strikers or the employers, as definite as it could be made and be effective, and complies with Clayton Law, section 19, providing that, in any case between employers and employees, an injunction should specify in reasonable detail the things enjoined, conceding that that section applied to such a suit. *Stephens v. Ohio State Tel. Co.*, 240 Fed. 776. 6—944
52. **Will Be Granted to Restrain Practice of Refusing to Carry Cargo for a Shipper, While Having Unengaged Cargo Space.**—Where there was evidence, in proceedings by the United States to dissolve a combination of ocean carriers under the Sherman Law, that one of the members of the combination had refused to carry a cargo for a certain shipper when there was unengaged space on its vessels, an injunction will be issued against the combination and its members to prohibit such practice in the future. *U. S. v. Prince Line, Ltd.*, 220 F., 234. 5—682
53. **Same—Will Not Be Granted Where There Was No Evidence That a Provision for "Fighting Ships" Had Been Used.**—Where a conference agreement between ocean carriers contained a provision for "fighting ships," but there was no evidence that one had ever been used, no injunction will be granted against that practice. *Ib.* 5—684

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- 54. Majority Stockholders of a Railroad Held Not Entitled to Preliminary Injunction to Restrain Consolidation, Where for Years, Through Stock Ownership, They Were Under One Management and Control.**—Minority stockholders of a railroad company, *Held* not entitled to a preliminary injunction to restrain its consolidation with another company on the alleged ground that it would be illegal as in restraint of competition and in violation of the Sherman Law, where, through ownership of a majority of the stock of one company by the other, they were, and had been for a number of years, as completely under one management and control as though consolidated, and during all such time the United States had acquiesced therein. *DeKoven v. L. S. & M. S. Ry. Co.*, 216 F., 958. 5—475
- 55. Will Be Granted Minority Stockholders of a Railroad, Enjoining a Dissolving of Contract Rights by Means of a Consolidation.**—Where, under existing leases and contracts, the dividends or annual returns on stock of the H. Company, a majority of which was owned by the C. Company, which was operating the H. Company's railroad under a lease, must be paid before the C. Company's stockholders could obtain anything, and, if this was not done, the system by which the C. Company obtained access to its terminal station in New York City would be disastrously affected, and the H. Company's shares were worth, by reason of such guaranty, many times what the shares of the C. Company were worth, the minority shareholders of the H. Company were entitled to enjoin the C. Company from dissolving such rights by a consolidation. *Boyd v. N. Y. & H. R. Co.*, 220 F., 181. 5—521
- 56. Same—The Granting of Preliminary Injunction Within the Discretion of Court.**—The granting of a preliminary injunction is discretionary with the court; the discretion to be exercised according to the circumstances of each case and the comparative injury that may result to the interested parties from its granting or denial. *DeKoven v. L. S. & M. S. Ry. Co.*, 216 F., 959. 5—477
- 57. Court Will Not Enjoin Minor Combinations in Suit to Enjoin General Combination.**—Injunctive relief against minor combinations between some only of the defendants, and not in furtherance of the general scheme attacked as constituting a restraint of interstate commerce forbidden by the Sherman Law, can not be granted without condemning the bill for multifariousness and misjoinder of parties and of causes of suit. *U. S. v. Reading Co.*, 57 L. Ed., 243. 4—738
- 58. Will Not Be Granted a Private Person to Restrain Continuance of Conspiracy in Violation of the Sherman Law.**—A private person can not obtain an injunction restraining the continuance of an alleged conspiracy or combination in restraint of

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interstate commerce under the Sherman Law, the injunctive remedy covered by such act being available to the Government only, and the individual being only authorized to sue for and recover threefold damages. *Mitchell v. Hitchman Coal & Coke Co.*, 214 F., 714. 5—631

[But see section 16 of the Clayton Law.]

59. Private Party Can Not Maintain Suit for, Under Sherman Law.—

A private party can not maintain a suit for an injunction under section 4 of the Sherman Law. *Paine Lumber Co. v. Neal*, 244 U. S., 471. 6—963

60. Private Parties Can Obtain, Under Section 16 of the Clayton Law, Against Threatened Loss.—While, under section 16 of the Clayton Law, private parties can obtain an injunction against threatened loss, that act, in terms, goes no further. *Fleitmann v. Welsbach Street Lighting Co.*, 240 U. S., 29. 5—431

INSTRUCTIONS TO JURY.

1. Members of Labor Union Paying Their Dues and Continuing to Delegate Authority to Their Officers to Commit Unlawful Acts are Liable.—In an action against members of a trade union for conspiracy in aiding an effort to compel plaintiff to unionize his factory, the court charged that mere membership in a labor union and payment of dues did not amount necessarily to counseling, advising, aiding, or abetting in a conspiracy of the officers and members to destroy plaintiff's business, but that if the members paid their dues and continued to delegate authority to their officers and agents to commit unlawful acts which constituted an interference with plaintiff's interstate trade and commerce, under such circumstances as lead you to believe they knew or "ought to have known," and that such officers and agents were in that matter warranted in the belief, that they were acting within their delegated authority, then such members and no others were liable. *Held*, that the words "ought to have known," in connection in which they were used, were intended to mean only that the jury must be justified in drawing the conclusion that the defendants must have known of the existence of the conspiracy, and so construed did not render the instruction objectionable as misleading. *Lawlor v. Loewe*, 209 F., 727. 5—408

2. Same—Plaintiff May Recover Only for Acts Done Before Suit Brought, Including Damages Resulting Therefrom After Suit Brought, Held Proper.—In an action for conspiracy in restraint of interstate commerce in violation of the Sherman Law, an instruction that the only acts for which plaintiff may recover are such as are alleged in the complaint and as were done by defendants or their agents before suit brought, and that plaintiffs were entitled to recover all damages which are the proximate and natural result of such acts, including such damages as may have continued or resulted there-

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from after suit was commenced, but that no recovery could be had for acts constituting a continuance of the conspiracy after suit brought, was proper. *Ib.* 5—410

3. **Members of Labor Unions Who Paid Their Dues and Continued to Delegate Authority to Their Officers Jointly Liable with Such Officers for Damages Sustained by Their Acts.**—In this case, held that the trial court properly instructed the jury to the effect that defendants, members of labor unions who paid their dues and continued to delegate authority to their officers to unlawfully interfere with the interstate commerce of other parties, are jointly liable with such officers for the damages sustained by their acts. *Lawlor v. Loewe*, 235 U. S., 534. 5—423

4. **On a Trial for Conspiracy Defendants Were Entitled to Specific Instructions Concerning Competitors Who Ceased to Exist Before Three-Year Period of Limitation.**—On a trial under an indictment charging a conspiracy extending over a great many years against competitors of the N. Company, and directed against the various competitors of such company as they came into existence, though the court charged that defendants could not be found guilty unless they had conspired within three years prior to the indictment, defendants were entitled to specific instructions that they could not be found guilty for conspiring against competitors who ceased to exist before the period of limitations. *Patterson v. U. S.*, 222 F., 649. 5—135

5. **Same—Error to Submit to Jury the Question Whether Conspiracy Included Means of Which There Was No Proof.**—On a trial for conspiring in restraint of the interstate trade of competitors of a company by the use of various means specified in the indictment, it was reversible error to submit to the jury the question whether the conspiracy included means of which there was no evidence. *Ib.* 5—135

6. **Same—Instruction Requested, That It Was Not Unlawful for Agents to Try to Sell Registers to Owners of Competing Registers in Exchange at Any Price Satisfactory, Needed Qualification and Was Properly Refused.**—It was unlawful for the officers and agents of the N. Company, engaged in manufacturing and selling cash registers, to sell or offer to sell and try to sell the N. Company's cash registers to persons who had bought and owned competing cash registers, if this involved the purchaser breaking his contract with the competitor in any particular, or was done for the purpose of driving the competitor from the field; and on a trial for conspiring in restraint of the interstate trade of competitors, an instruction that it was not unlawful for such officers and agents to sell or offer and try to sell cash registers to per-

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sons who owned competing registers in exchange at such price as was satisfactory to the parties needed qualification, and was properly refused. *Ib.* 5—137

7. On a Trial for Conspiracy a Requested Instruction That It Was Not Unlawful to Require Agents to Report Names of Purchasers of Competing Cash Registers, Was Too Broad and Properly Refused.—Whether it was unlawful for the officers and agents of the N. Company, engaged in manufacturing and selling cash registers, to require agents of that company to report the names of persons who had purchased cash registers from competitors, or to secure samples of machines put on the market from competitors, depending on the manner in which the information or samples were obtained or secured; and on a trial for conspiring in restraint of the interstate trade and commerce of competitors of the N. Company, an instruction that it was not unlawful to so require was too broad, and was properly refused. *Ib.* 5—137
8. Refusal to Give—When Exception to, Insufficient to Call for Review of Ruling.—Where the court, in response to a party's requested instructions, stated that it had touched on every one of the requests, and did not charge them in the language requested, but counsel might take an exception that it did not specifically charge in the precise language requested, and the party only excepted to that portion of the charge which refused to give the requested instructions, except as charged, did not call the trial court's attention to what was objected to, and was insufficient to call for a review of the ruling. *Buckeye Powder Co. v. DuPont Powder Co.*, 223 F., 887. 4—605
9. Same—Where One of Series of Requested Instructions Is Erroneous, Not Error to Refuse Series.—It is not error to refuse a series of requested instructions, where one of the instructions is erroneous. *Ib.* 4—606
10. Same—Certain Instructions Given, Not Objectionable.—In an action for damages under section 7 of the Sherman Law, for violations of sections 1 and 2 of the law, instructions which state that a defendant at the time of the organization of plaintiff company, and during the time plaintiff carried on its business, was acting in violation of the Sherman Law, as attempting to monopolize trade, but that the status of defendant did not make it liable to plaintiff, and plaintiff, to recover, must show that defendant used its power in the trade oppressively, at least generally, and thereby obstructed the free flow of commerce, and that, if plaintiff was sufficiently capitalized to carry on a struggle under normal conditions, it was immaterial whether it was or was not sufficiently capitalized to meet a competition forced on it by unlawful means, were not objectionable as equivalent to

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charging that, after a monopoly had obtained a foothold, competitors entered the field at their peril. *Ib.* 4—606

11. **Instructing Jury to Consider All Means Used, Without Calling Attention to Abandoned Charges, etc., Error.**—Instructing the jury to consider all the means charged in an indictment for conspiring, contrary to the Sherman Law, to restrain or monopolize interstate or foreign commerce, and to find a verdict of guilty on any one of them, without calling the jury's attention in this connection to the fact that some of the charges had been abandoned, is reversible error, especially where one of the means alleged, taken by itself, shows only cheating, and could not warrant a finding of the conspiracy with which the defendants were charged. *Nash v. U. S.*, 57 L. Ed., 1232. 5—240

INTENT.

1. **Where Acts Charged Are Necessarily in Restraint of Trade, Defendants Are Presumed to Have Intended Such Consequences.**—If an indictment under the Sherman Law charges acts on the part of defendants which are in fact and necessarily in restraint of interstate trade and commerce, or effect a monopoly of some part of such commerce, by wrongfully injuring or destroying the business of competitors, defendants are presumed to have intended such consequences, and to have known that their acts were in violation of the statute. *U. S. v. Patterson et al.*, 201 F., 715. 5—28
2. **Extent of Control Over Commodity, May Be Evidence of, to Suppress Competition.**—Whether a particular act or agreement is reasonable and normal or unreasonable may in doubtful cases turn upon intent, and the extent of control obtained over the output of a commodity may afford evidence of the intent to suppress competition. *U. S. v. Reading Co.*, 226 U. S., 370. 4—785
3. **Same—Is of No Consequence, Where No Doubt of Necessary Result of Act.**—Where there is no doubt that the necessary result of an act is to materially restrain trade between the States, intent is of no consequence. *Ib.* 4—786
4. **When Necessary to Establish a Monopoly in Fact.**—Though no intent is necessary to establish a monopoly in fact, created by the purchase of a competitor's business, there can be no finding of an attempt to monopolize without proof of intent. *U. S. v. Quaker Oats Co.*, 232 F., 500. 6—432
5. **May Convert Acts of Competition Into a Conspiracy.**—An unlawful intent may be sufficient to convert what, on their face, might be no more than ordinary acts of competition, or the small dishonesties of trade, into a conspiracy forbidden by the Sherman Law, enacted to prevent combinations in restraint of interstate or foreign commerce, or the monopolization or

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Intent to monopolize any part thereof. *Nash v. U. S.*, 57 L. Ed., 1232. 5—239

INTERSTATE COMMERCE.

1. **Commerce Defined.**—The word “commerce,” as used in the Sherman Law, and in the Constitution of the United States, has a broader meaning than the word “trade.” Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, as well as the purchase, sale, and exchange of commodities. *U. S. v. Cassidy*, 67 F., 698. 1—452
2. **Scope of Sherman Law.**—While the primary object of the statute was doubtless to prevent the destruction of legitimate and healthy competition in interstate commerce, by the engrossing and monopolizing of the markets for commodities, yet its provisions are broad enough to reach a combination or conspiracy that will interrupt the transportation of such commodities and persons from one State to another. *U. S. v. Workmen's Amalgamated Council*, 54 F., 995, cited. *Ib.* 1—459
3. **Pullman cars in use upon railroads are instrumentalities of “commerce.”** *U. S. v. Debs*, 64 F., 763, cited. *Ib.* 1—459
4. **Commerce—Definition.**—Commerce is the sale or exchange of commodities, but that which the law looks upon as the body of commerce is not restricted to specific acts of sale or exchange. It includes the intercourse—all the initiatory and intervening acts, instrumentalities, and dealings—that directly bring about the sale or exchange. *U. S. v. Swift & Co.*, 122 F., 529. 2—237
5. **Interstate Commerce Includes Purchase, Sale, and Exchange of Commodities.**—Interstate commerce consists of intercourse and traffic between the citizens or inhabitants of different States, and includes not only the transportation of persons and property and the navigation of public waters for that purpose, but also the purchase, sale, and exchange of commodities. *Addyston Pipe and Steel Co. v. United States*, 175 U. S., 211. 1—1009
6. **Same—What Constitutes a Violation of the Statute.**—Any agreement or combination which directly operates, not alone upon the manufacture, but upon the sale, transportation, and delivery of an article of interstate commerce, by preventing or restricting its sale, thereby regulates interstate commerce to that extent, and thus trenches upon the power of the national legislature, and violates the Sherman Law. *Ib.* 1—1030
7. **Interstate Commerce Defined.**—“Interstate commerce” comprehends intercourse for the purposes of trade in any and all of its forms, including transportation, purchase, sale, and exchange of commodities between the citizens of different

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States; and if any commercial transaction reaches an entirety in two or more States, and if the parties dealing with reference to that transaction deal from different States, then the whole transaction is a part of the interstate commerce of the United States, and subject to regulation by Congress under the Constitution. *In re charge to Grand Jury*, 151 F., 838. 3—162

8. What Constitutes Interstate Commerce.—A corporation engaged in the manufacture and sale of tobacco in its various forms, which purchases its raw materials and supplies in different States and in foreign countries, and ships them by means of common carriers into other States for manufacture, and its products from one State into another between its different factories and agencies, and sells the same by means of agencies and salesmen throughout the United States and in the markets of the world, is engaged in "interstate commerce," and it is immaterial that it distributes its products by means of common carriers or that the title technically passes on delivery to such carriers. *U. S. v. American Tobacco Co.*, 164 U. S., 705. 3—434

9. What Constitutes Interstate Commerce.—A manufacturing company which makes its product in one State and stores it in ware-rooms in other States, where it is sold, the trade extending over several States, is engaged in interstate commerce. *U. S. v. Standard Sanitary Mfg. Co.*, 191 F., 193. 4—425

10. Beef Trust—Combination to Monopolize Interstate Commerce in Fresh Meats.—Interstate commerce is unlawfully restrained, in violation of the Sherman Law, by a combination of independent meat dealers, in aid of an attempt to monopolize commerce in fresh meat among the States, to bid up prices for live stock for a few days at a time, in order to induce cattlemen in other States to make large shipments to the stockyards, or by a combination for the same purpose to fix the selling price of fresh meat, and to that end to restrict shipments, when necessary, to establish a uniform rule of credit to dealers and to keep a black list, or by a combination in aid of such purpose to make uniform and improper charges for cartage for the delivery of meat sold to be shipped to dealers and consumers in the several States. *Swift & Co. v. United States*, 196 U. S., 375. 2—643

11. The effect upon interstate commerce of a combination of a dominant portion of the dealers in fresh meat throughout the United States not to bid against, or only in conjunction with, each other in order to regulate prices in and induce shipments to the live-stock markets in other States, to restrict shipments, etc., with intent to monopolize commerce

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- among the States, is direct and not accidental or secondary as in *U. S. v. E. C. Knight Co.*, 156 U. S., 1. *Swift & Co. v. United States*, 196 U. S., 375. 2—641
12. When cattle are sent for sale from a place in one State, with the expectation they will end their transit, after purchase, in another State, and when in effect they do so, with only the interruption necessary to find a purchaser at the stock-yards, and when this is a constantly recurring course, it constitutes interstate commerce and the purchase of the cattle is an incident of such commerce. *Ib.* 2—665
13. Although the jurisdiction of Congress over commerce among the States is full and complete, it is not questioned that it has none over that which is wholly within a State, and therefore none over combinations or agreements so far as they relate to a restraint of such trade or commerce; nor does it acquire any jurisdiction over that part of a combination or agreement which relates to commerce wholly within a State by reason of the fact that the combination also covers and regulates commerce which is interstate. *Addyston Pipe and Steel Co., v. U. S.*, 175 U. S., 211. 1—1009
14. **Kansas City Live Stock Association—Engaged in Interstate Commerce.**—Where the shipments of live stock from growers, dealers, and traders in various States and Territories to the defendants, the Kansas City Live Stock Association, was solicited by the latter chiefly through personal solicitation of traveling agents, and through advertisements, the course of business involving frequent loans to shippers in other States, secured by chattel mortgages on herds, and frequent drafts drawn by shippers on the defendants, and discounted at their local banks in other States on the strength of bills of shipment attached thereto, shipments being made to Kansas City, and the loans or drafts paid from proceeds of sale, and the balance remitted to the shippers, and sales at Kansas City were made for shipment to markets in other States, as well as for slaughter at packing houses near by, the traffic being of immense proportions, and defendants active promoters, and frequently interested parties, gathered in for sale and slaughter millions of cattle, sheep, and hogs; and their rules and regulations covered the entire business, and extended over the whole field of operation, *held*, that defendants were engaged in commerce between the States, and were subject to the provisions of the Sherman Law. *U. S. v. Hopkins*, 82 F., 529. 1—725
- Reversed, 171 U. S., 578 (1—941).
15. **Same.**—Live stock shipped from various States to the yards of a stock-yards association in another State, by the solicitation and procurement of the members thereof, to be there sold or to be reshipped to other States, if the market should be

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unsatisfactory, does not cease to be a subject of interstate commerce as soon as it reaches such yards and is there unloaded, nor until it has been further acted upon so as to become mingled with the mass of property in the State. *Ib.*

1—741

16. Same.—The fact that the place of business of an association is located upon both sides of the line dividing two States is in itself of no material importance in determining whether the business transacted by it is commerce between the States. *Ib.*

1—736

17. Foreign Commerce—Regulation of by Congress.—The transportation of passengers between this country and Europe forms a part of the commerce of the United States with foreign nations; and Congress has power to prohibit all contracts, combinations, and conspiracies in restraint of such part of such commerce. *U. S. v. Hamburg-American Line*, 200 F., 806.

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18. Same—Restraint by Citizens of Foreign Countries.—Citizens of foreign countries are not free to restrain or monopolize the foreign commerce of this country by entering into a combination abroad, nor by employing foreign vessels to effect their purpose. *Ib.*

4—895

19. Same.—The business of buying and selling live stock at stock yards in a city by members of a stock exchange as commission merchants is not interstate commerce, although most of the purchases and sales are of live stock sent from other States, and the members of the stock exchange are employed to sell by letter from the owners of the stock in other States, and send agents to other States to solicit business, and advance money to the cattle owners, and pay their drafts, and aid them in making the cattle fit for market. *Hopkins v. United States*, 171 U. S., 578.

1—941

Reversing. 82 F., 578 (1—725).

20. Same.—The fact that a State line runs through stock yards, and that sales may be made of a lot of stock in the yards which may be partly in one State and partly in another, has no effect to make the business of selling stock interstate commerce. *Hopkins v. United States*, 171 U. S., 578.

1—941

21. Same.—A by-law of the Kansas City Live Stock Exchange, which regulates the commissions to be charged by members of that association for selling live stock is not in restraint of interstate commerce, or a violation of the Sherman Law, to protect commerce from unlawful restraints. *Ib.*

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22. Same.—A commission agent who sells cattle at their place of destination, which are sent from another State to be sold, is not engaged in interstate commerce; nor is his agreement with others in the same business, as to the commissions to

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- be charged for such sales, void as a contract in restraint of that commerce. *Ib.* 1—954
23. Same.—In order to come within the provisions of the Statute, the direct effect of an agreement or combination must be in restraint of trade or commerce among the several States or with foreign nations. *Ib.* 1—954
24. Same.—Restrictions on sending prepaid telegrams or telephone messages, made by a by-law of a live-stock exchange, when these restrictions are merely for the regulation of the business of the members, and do not affect the business of the telegraph company, are not void as regulations of interstate commerce. *Ib.* 1—961
25. Same.—The business of agents in soliciting consignments of cattle to commission merchants in another State for sale is not interstate commerce, and a by-law of a stock exchange restricting the number of solicitors to three does not restrain that commerce or violate the act of Congress. *Ib.* 1—963
26. Same.—A combination of commission merchants at stock yards, by which they refuse to do business with those who are not members of their association, even if it is illegal, is not subject to the Sherman Law, to protect trade and commerce, since their business is not interstate commerce. *Ib.* 1—966
27. Commerce Between Two Points in Same State—Vessels Passing Over Soil of Adjoining States.—Where a contract relates to commerce between points within a State, both on a boundary river, it will not be construed as falling within the prohibitions of the Sherman Law because the vessels affected by the contract sail over soil belonging to the other State while passing between the interstate points. *Cincinnati, etc., Packet Co. v. Bay*, 200 U. S., 181. 2—872
28. Same.—Even if there is some interference with interstate commerce, a contract is not necessarily void under the Sherman Law if such interference is insignificant and merely incidental and not the dominant purpose; the contract will be construed as a domestic contract and its validity determined by the local law. *Ib.* 2—872
29. Same.—A contract for sale of vessels, even if they are engaged in interstate commerce, is not necessarily void because the vendors agree, as is ordinary in case of sale of a business and its good will, to withdraw from business for a specified period. *Ib.* 2—873
30. What Acts Are Not in Restraint.—The action of the members of a labor union in attempting to compel a hat manufacturer to unionize his factory by leaving his employment and preventing others from taking employment therein, and also, with the assistance of the members of affiliated organiza-

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tions, by declaring a boycott upon his goods in other States into which such goods have been shipped for sale at retail, does not have such relation to interstate commerce as to constitute a combination or conspiracy in restraint of such commerce in violation of the Sherman Law. *Loewe v. Lawlor*, 148 F., 925. 3—43

Reversed by Supreme Court (208 U. S., 274). 3—324

41. **Source of Power to Regulate.**—The power of Congress to legislate on the subject of contracts and combinations in restraint of trade is derived from its constitutional power to regulate interstate and foreign commerce, and the Sherman Law is to be so construed, and applies only to contracts or combinations which directly, immediately, and necessarily affect commerce among the States or with foreign nations. *Bigelow v. Calumet & Hecla Mining Co.*, 167 F., 725. 3—624
32. **Powers of the United States—Transmission of the Mails.**—While the United States is a Government of enumerated powers, it has full attributes of sovereignty within the limits of those powers, among which are the power over interstate commerce and the power over the transmission of the mails. *In re Debs*, 158 U. S., 564. 1—565
33. **Same.**—The powers thus conferred are not dormant, but have been assumed and put into practical exercise by congressional legislation. *Ib.* 1—597
34. **Same—Removal of Obstructions.**—In the exercise of those powers the United States may remove everything put upon highways, natural or artificial, to obstruct the passage of interstate commerce or the carrying of the mails. *Ib.* 1—597
35. **Same—Executive Power May Appeal to Civil Courts.**—While it may be competent for the Government, through the executive branch and in the use of the entire executive power of the Nation, to forcibly remove all such obstructions, it is equally within its competency to appeal to the civil courts for an inquiry and determination as to the existence and the character of any of them, and if such are found to exist or threaten to occur, to invoke the powers of those courts to remove or restrain them, the jurisdiction of courts to interfere in such matters by injunction being recognized from ancient times and by indubitable authority. *Ib.* 1—597
36. **Same—Circuit Court Had Power to Issue Injunction.**—The complaint filed in this case clearly shows an existing obstruction of artificial highways for the passage of interstate commerce and the transmission of the mails, not only temporarily existing, but threatening to continue, and under it the circuit court had power to issue its process of injunction. *Ib.* 1—597
37. **Policy of Congress.**—It is the declared policy of Congress, which accords with the principles of the common law, to promote

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- individual competition in relation to interstate commerce, and to prevent combinations which restrain such competition between their members, or between such members as individuals and outside competitors. *U. S. v. Chesapeake & O. Fuel Co.*, 105 F., 93. 2—34
- Affirmed, 115 F., 610 (2—151).
- 38. Policy of the Nation in Regard to.**—It has been the public policy of this Nation, from the date of the passage of the Interstate Commerce Act of 1887, to regulate that part of interstate commerce which consists of transportation, and to so far restrict competition in freight and passenger rates between railroad companies engaged therein as shall be necessary to make such rates open, public, reasonable, uniform, and steady, and to prevent discriminations and undue preferences. *U. S. v. Trans-Missouri Freight Assn.*, 58 F., 58. 1—186
- Decision reversed, 166 U. S., 290 (1—648).
- 39. The Sherman Law embraces and declares to be illegal every contract, combination, or conspiracy, in whatever form, of whatever nature, and whoever may be parties to it, which directly or necessarily operates in restraint of trade or commerce among the several States or with foreign nations.** *Northern Securities Co. v. United States*, 193 U. S., 331. (Harlan, Brown, McKenna, Day.) 2—461
- 40. Combinations, even among private manufacturers or dealers, whereby interstate or international commerce is restrained, are equally embraced by the act.** *Ib.* 2—461
- 41. Every combination or conspiracy which would extinguish competition between otherwise competing railroads, engaged in interstate trade or commerce, and which would in that way restrain such trade or commerce, is made illegal by the act.** *Ib.* 2—462
- 42. Congress may, in the exercise of the power conferred upon it by the commerce clause of the Constitution, prohibit private contracts which operate directly and substantially to restrain interstate commerce.** *U. S. v. Northern Securities Co.*, 120 F., 721. 2—216
- 43. The power of Congress to regulate interstate commerce comprises the right to enact a law prohibiting the citizen from entering into those private contracts which directly and substantially and not merely indirectly, remotely, incidentally, and collaterally regulate to a greater or less degree commerce among the States.** *Addyston Pipe & Steel Co. v. United States*, 175 U. S., 211, 229. 1—1009
- 44. A State can not invest a corporation organized under its laws with the power to do acts in the corporate name which would operate to restrain interstate commerce.** *U. S. v. Northern Securities Co.*, 120 F., 721. 2—215

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45. **Carriers—Connecting Lines—Prepayment of Freight.**—A common carrier engaged in interstate commerce may at common law, and under the Interstate Commerce Law, demand prepayment of freight charges, when delivered to it by one connecting carrier, without exacting such prepayment when delivered by another connecting carrier, and may advance freight charges to one connecting carrier without advancing such charges to another connecting carrier. *Gulf, C. & S. F. Ry. Co. v. Miami S. S. Co.*, 86 F., 407. 1—823
46. **Railroad Companies—Arrangements for Through Billing.**—There is no principle of common law which forbids a single railroad corporation, or two or more of such corporations, from selecting, from two or more other corporations, one which they will employ as the agency by which they will send freight beyond their own lines, on through bills of lading, or as their agent to receive freight, and transmit it on through bills to their own lines, and without breaking bulk; and the right to make such selection is not taken away by the Interstate Commerce Law. (*New York & N. Ry. Co. v. New York & N. E. R. Co.*, 50 Fed., 867, explained.) *Prescott & A. C. R. Co. v. Atchison, T. & S. F. R. Co.*, 73 F., 438. 1—604
47. **Duty of Common Carrier to Furnish Transportation.**—Where plaintiff sought to establish his banana business in Central America, and expended considerable money in his plant, it was engaged in foreign commerce when it began to move men, material, and supplies to and from the United States and Central American ports in furtherance of its business, and was therefore entitled to compel defendant to furnish transportation facilities on the same terms that defendant furnished such facilities to others. *American Banana Co. v. United Fruit Co.*, 160 F., 189. 3—380
48. **A Single Shipment May Constitute.**—A single shipment of a commodity, as tobacco, from one State into another to be marketed, constitutes interstate trade and commerce, within the meaning of the Sherman Law. *Steers v. U. S.*, 192 F., 4. 4—432
49. **A Corporation Having Its Manufactory in One State, and Warehouses in Other States, Is Engaged in.**—A corporation having a manufactory in one State and warehouses in several other States held to be engaged in interstate commerce under the circumstances of this case. *Standard Sanitary Mfg. Co. v. U. S.*, 226 U. S., 50. 4—650
50. **Same—Manufacturing in One State and Shipping Products to Another.**—A corporation manufacturing its product in New Jersey, and buying also from other manufacturers and jobbers, which ships from there to its warehouses in Massachusetts and New York from which sales are made in those

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States and in Connecticut, is engaged in interstate commerce, and as such is subject to the prohibitions of the Sherman Law, against restraints of trade and monopolies. *Ib.*, 57 L. Ed., 107. 4—650

51. Allegations in a Pleading That an Ice Company Is Engaged in Cutting Ice in One State and Selling It in Another not Sufficient to Show Company Is Engaged in.—Allegations that an ice company is engaged in cutting and harvesting ice in New Hampshire and transporting the same to Boston and selling it in Boston are not sufficient to show that the corporation is engaged in interstate commerce. *Corey v. Independent Ice Co.*, 207 F., 461. 5—334
52. Tugs Engaged in Towing Vessels Engaged in, Are Instrumentalities of.—Tugs employed in the business of towing into and out of harbors and between ports, vessels so engaged, are themselves instrumentalities of interstate commerce. *U. S. v. Great Lakes Towing Co.*, 208 F., 742. 5—360
53. Photo-Play Films Shipped from One State to Another, Are Subjects of.—Photo-play films, shipped from one State to another, are subjects of interstate commerce, and fall within the scope of the Sherman Law, prohibiting unreasonable and undue restraint of trade and commerce. *U. S. v. Motion Picture Patents Co.*, 225 F., 803. 6—209
54. The Transportation from State to State, of Stage Properties Belonging to Vaudeville Theaters, and of Performers, Constitutes Interstate Commerce.—Where vaudeville theaters were arranged in circuits, and it was the practice to book performances for the whole or part of one circuit under one contract, requiring them to pass from theater to theater and from State to State, taking with them certain paraphernalia and stage properties, certain aspects of the business of the theater owners and their booking agents constituted interstate commerce, as, for instance, the contracts under which the performers were to go from State to State, fulfilling their contracts as much by the travel as by the acting, the carriage of their stage properties and paraphernalia from one State to another, and the sending by the theaters themselves from State to State of scenery and advertising matter. *Marienell, Lim. v. United Booking Offices*, 227 F., 167. 5—947
55. All Contracts Involving, Subject to Control of Congress.—All persons entering into contracts involving interstate commerce must do so subject to the right of Congress thereafter to control, regulate, or prohibit the performance thereof. *Elliot Machine Co. v. Center*, 227 F., 126. 5—942
56. Corporation Manufacturing and Leasing Machines for Manufacturing Shoes, etc., Is Engaged in.—The fact that every lease is not commerce is not conclusive that none may be, and where a large corporation, doing an interstate business

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amounting to millions of dollars annually in disposing of machinery which it manufactures, sees proper to lease instead of sell its machines, it is no less engaged in interstate commerce than it would be if it sold the machines, and its lease contracts are proper subjects of congressional regulation. *U. S. v. United Shoe Mach. Co.*, 234 F., 143. 5—818

POWER OF CONGRESS OVER. See CONGRESS.

PREPAYMENT OF FREIGHT. See CARRIERS.

See also CORPORATIONS, 2, 3; ACTIONS AND DEFENSES, 154, 155; and COMBINATIONS, ETC., generally, particularly paragraphs 124-146, 263-300.

IRON PIPE. See COMBINATIONS, ETC., 265.

JOINT RATES AND BILLING. See CARRIERS.

JOINT TRAFFIC ASSOCIATIONS. See COMBINATIONS, 190, 191, 344-347.

JUDGMENT.

General expressions in an opinion which are not essential to dispose of a case are not permitted to control the judgment in subsequent suits. *Harriman v. Northern Securities Co.*, 197 U. S., 244. 2—669

JURISDICTION.

1. In a suit instituted in the name of the United States, under the Sherman Law, jurisdiction depends alone upon the act, and the court is concerned with no case between private persons or corporations, where jurisdiction depends on other conditions, and in which proceeding a common-law remedy might become available. *U. S. v. Addyston Pipe & Steel Co.*, 78 F., 712. 1—631
2. Non-residents.—The authority given by section 5 of the Sherman Law to bring in non-residents of the district can not be availed of in private suits, and the court can acquire no jurisdiction over them. *Greer, Mills & Co., v. Stoller*, 77 F., 1. 1—620
3. Objection to of Court Is Waived by Party Appearing in a Suit.—By appearing in a suit in the Federal Circuit Court, defendants waived any objection that the suit was not brought in the district where plaintiffs or they reside. *Irving v. Joint Council of Carpenters, etc.*, 180 F., 898. 5—379
4. Supreme Court Never Shirks Duty of Maintaining Lines of Separation.—In determining questions of jurisdiction the Supreme Court never shirks the responsibility of maintaining the lines of separation defined in the Constitution and the laws made in pursuance thereof. *Henry v. A. B. Dick Co.*, 224 U. S., 13. 6—744
5. Same—Test of, in Suit Involving Patent Laws.—The test of jurisdiction is whether complainant does or does not set up a right, title or interest under the patent laws or make it

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- appear that a right or privilege will be defeated by one, or sustained by another, construction of those laws. *Ib.* 6—743
6. **Conflicting with Exclusive Authority of State Appointing Executor, Should Be Disregarded in the Federal Court.**—A State may, as to goods within its own jurisdiction, provide that a foreign executor shall be its own representative, and that process served on him within its borders shall be effective to determine the disposition of such goods; but since the fourteenth amendment a jurisdiction conflicting with the exclusive authority of the State appointing the executor should be disregarded at the outset, at least in a Federal court. *Thorburn v. Gates*, 225 F., 616. 6—201
- See also* COURTS; STATES 8, 10; UNITED STATES.

JURY.

1. **Reasonable Doubt.**—A reasonable doubt is one arising out of the evidence; not an imaginary doubt, a fanciful conjecture, or strained inference, but such a doubt as a reasonable man would act upon or decline to act upon when his own concerns are involved—a doubt for which a good reason can be given, which reason must be based upon the evidence or want of evidence. *U. S. v. Cassidy*, 67 F., 781. 1—563
2. **Credibility of Witnesses.**—The jury are the exclusive judges of the credibility of the witnesses. A witness is presumed to speak the truth, but this presumption may be repelled by the manner in which he testifies, by the character of his testimony, or by the evidence affecting his character for truth, honesty, or integrity, or his motives, and by contrary evidence. But the power of the jury to judge of the effect of evidence is not arbitrary; it must be exercised with legal discretion, and in subordination to the rules of evidence. *Ib.* 1—564
3. **Validity of Contract—When Question for Jury.**—Conceding that a contract legal in its terms and in its consideration may be rendered illegal as against public policy by reason of the intention of the parties to so use it as to commit civil injury to third persons, where the evidence as to such intention is conflicting the contract can not be declared illegal by the court as matter of law. *U. S. v. Consolidated Seeded Raisin Co.*, 126 F., 364. 2—288
4. **Province of, to Determine Inferences to Be Drawn from Conflicting Evidence.**—In an action to charge defendants, as members of various local unions of a labor organization, with liability for acts of agents of the organization on the ground of a combination in restraint of interstate commerce in violation of the Sherman law, where there was conflicting testimony as to their knowledge of such acts and other evidence from which inferences must be drawn, the question of liability was for the jury, and it was error to withdraw such

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- question from them and to submit only the question of damages. *Lawlor v. Loewe*, 187 F., 525. 4—268
5. In Action for Damages Parties Entitled to Trial by Jury.—An action by a shipper, authorized by the Sherman law to recover treble damages to his business and property by reason of a conspiracy and combination by interstate carriers to charge excessive and unlawful rates for the shipment of coal from the mines to tidewater, was an action at law as to which the parties were entitled to a jury trial. *Meeker v. Lehigh Valley R. R. Co.*, 162 F., 357. 3—385
6. Certain Instructions to, Not Erroneous, in Absence of Requests to Charge.—Instructions in a prosecution for conspiracy, taken together, *held* not erroneous, in the absence of requests for more specific instructions on certain points. *Steers v. U. S.*, 192 F., 8. 4—437
7. Failure of Court to Instruct, Not Error, When Instruction Not Requested.—Defendants in a criminal trial in a Federal court can not assign as error the failure of the court to instruct as to certain theories or inferences, which might find support in the evidence when they did not request such instruction. *Ib.* 4—440
8. Province of to Determine Whether Defendants Participated in the Conspiracy.—In an action against members of a trade union for conspiracy in attempting to destroy plaintiff's business or compel him to unionize his factory, whether defendants had knowledge of the conspiracy and participated therein *held* for the jury. *Lawlor v. Loewe*, 209 F., 726. 5—407
9. Whether a combination is in unreasonable restraint of interstate trade, in violation of the Sherman Law, is for the jury to determine. *U. S. v. Whiting*, 212 F., 474. 5—458
10. Liability for Damages Under the Sherman Law Can Be Enforced Only Through Verdict of Jury.—When the penalty of triple damages is sought under § 7 of the Sherman Law, the liability can only be enforced through the verdict of a jury in a court of common law. *Fleitmann v. Welsbach Street Lighting Co.*, 240 U. S., 29. 5—431
11. To Determine Excess Over Reasonable Rate, in Action for Damages, Due to Unlawful Combination.—When more than a reasonable rate is exacted as a result of an unlawful combination, the excess over what was reasonable affords a basis for the damages recoverable under § 7, and whether, and to what extent, such rate was unreasonable are questions determinable by the jury, on proper evidence and instructions. *Thomsen v. Cayser*, 243 U. S., 88. 6—729
12. Same—Failure of Court to Give Instruction Requested, When Harmless Error.—Failure to give an instruction upon the burden of proving rates unreasonable, *held*, at most a harmless

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error, in view of a painstaking trial and careful instructions upon the estimation of damages. *Ib.* 6—730

13. **Federal Conformity Statute Does Not Cover Instructing.**—The Federal conformity statute (Rev. Stat., sec. 914), providing for conforming the procedure in the Federal courts to that in the State courts in civil actions at law, does not cover instructing the jury. *Steers v. U. S.*, 192 F., 10. 4—440

See also WITNESSES; GRAND JURY.

LABOR UNIONS.

1. **The employees of railway companies have a right to organize for mutual benefit and protection, and for the purpose of securing the highest wages and the best conditions they can command. They may appoint officers, who shall advise them as to the course to be taken in their relations with their employer, and they may, if they choose, repose in their officers' authority to order them, or any of them, on pain of expulsion from their union, peaceably to leave the employment because the terms thereof are unsatisfactory. But it is unlawful for them to combine and quit work for the purpose of compelling their employer to withdraw from his relations with a third party, for the purpose of injuring that third party.** *Thomas v. Railway Co.*, 62 Fed., 817, followed. *U. S. v. Cassidy*, 67 F., 711. 1—467, 538
2. **Same.**—A strike, or a preconcerted quitting of work, by a combination of railroad employees, is, in itself, unlawful, if the concerted action is knowingly and willfully directed by the parties to it for the purpose of obstructing and retarding the passage of the mails, or in restraint of trade and commerce among the States. *Ib.* 1—538
3. **Members of Have Right to Strike Peaceably But Not to Threaten Owners, etc.**—Workingmen have the right to unite to protect themselves, and to strike peaceably for grievances, but not to threaten owners, builders, and architects that their contracts will be held up if they, or any of their sub-contractors, use another employer's products. *Irving v. Joint Council of Carpenters, etc.*, 180 F., 900. 5—383
4. **Member of Who Joins in Making Unlawful Rule, Is Liable for Carrying It Out, Though Not Personally Participating Therein.**—A member and officer of a labor organization, who joins with others in the adoption of a rule or regulation which is made a part of the organic law of the organization and binding on all its members under penalty of a fine, if such rule or regulation is unlawful as in restraint of trade, is liable for anything done to carry it out, although he does not personally participate therein. *Irving v. Neal et al.*, 209 F., 475. 5—392
5. **Same.**—Combination of Refusing to Work Where Non-Union Finish Is Used, if Interstate Trade Is Restrained, Is Unlawful.—

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A combination between local unions of organizations of carpenters and joiners, by which their members are pledged to refuse to work on any job where trim or finish made in a non-union shop is used, is in restraint of trade and commerce, and, if it affects interstate commerce, is in violation of the Sherman Law, and it is immaterial that the combination is not directed against any particular concern or dictated by any malicious motive. *Ib.* 5—393

But see 244 U. S., 459.

6. **Contract Between a Company and a Labor Union Concerning Wages, etc., Not Objectionable as Tending to Monopoly.**—A contract between a manufacturing corporation and a labor union, by which the corporation thereafter agreed to pay union wages and to comply with the union hours of labor and conditions of employment, but which contained no direct provision binding the corporation not to employ non-union men, was not objectionable as tending to create a monopoly in favor of members of the unions to the exclusion of others seeking employment. *Post v. Bucks Stove & Range Co.*, 200 F., 921. 4—807
7. **Members of, Declaring Boycott on Goods of Manufacturer Shipped to Other States, Constituted Unlawful Combination, for Which Manufacturer Entitled to Damages.**—Where members of a labor union attempted to compel a hat manufacturer to unionize his factory, left his employment therein, and with the assistance of members of affiliated organizations declared a boycott on his goods in other States into which the goods had been shipped for sale at retail, such acts constituted a combination or conspiracy in restraint of interstate commerce in violation of the Sherman Law, for which the manufacturer was entitled to recover treble damages under section 7. *Lawlor v. Loewe*, 209 F., 725. 5—404
8. **Members of Are Bound to Know Constitutions of Their Societies.**—Members of unions and associations are bound to know the constitutions of their societies; and, on the evidence of this case, the jury might well find that the defendants who were members of labor unions knew how the words of the constitutions of such unions had been construed in the act. *Lawlor v. Loewe*, 235 U. S., 535. 5—424
9. **United Mine Workers of America an Unlawful Organization.**—The United Mine Workers of America is an unlawful organization because of its principles as set forth in its constitutions, obligations of its members, and rules which (1) require its members to surrender their individual freedom of action; (2) seek to require in practical effect all mine workers to become members, whether desirous of doing so or not; (3) to

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control and restrict, if not to destroy, the right of the mine owner to contract with his employees independent of the organization; (4) to exclude his right to employ non-union labor if he desires; (5) to limit his right to discharge, in the absence of contract, whom he pleases, when he pleases, and for any cause or reason that to him seems proper; and (6) assumes the right through its officers to control the mine owner's business by shutting down his mine, and calling out his men upon indefinite strike in obedience to their obligation to the union, whether the men desire to quit work or not, whenever such officers deem it to the best interests of the union and regardless of his rights or interests, or the loss, direct and indirect, which he may sustain. It is also unlawful because of its procedure and practices, in that (1) it seeks to create a monopoly of mine labor such as to enable it as an organization to control the coal-mining business of the country; and (2) has by express contract joined in a combination and conspiracy with a body of rival operators, resident in other States, to control, restrain, and to an extent at least destroy the coal trade of West Virginia, and by the admission of its officers has spent 14 years time and hundreds of thousands of dollars in an effort to accomplish such purpose.

Hitchman Coal & Coke Co. v. Mitchell, 202 F., 533. 5—554

Reversed, 214 F., 685.

Decree of Circuit Court of Appeals, reversed, and that of the District Court modified and affirmed by the Supreme Court, Dec. 10, 1917, 245 U. S., 229.

10. **May Not Accomplish Its Ends by Violence or Intimidation, or Induce Members to Break Existing Contracts; Nor Interfere with Right of Owner in the Lawful Conduct of his Business.**—Labor unions in their relations to employers of their members, while they may use all peaceful efforts to advance the interests of their members in the way of aiding them to secure better wages, shorter hours of labor, and better conditions in which to work, may not accomplish these ends by violence, coercion, or intimidation on their part or at their instance. They may not induce their members to break existing contracts with their employers, nor interfere by intimidation or coercion with the inherent right of the employer to control his property and conduct his business in any lawful manner he may choose, and while they have the lawful right to advise their members to strike, where not in violation of contracts, and by reasoning or persuasion endeavor to prevent others from taking their places, neither they nor their members have any right by intimidation or coercion to prevent other laborers or any of the members of the union from taking employment with such employer.

Id.

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11. **Same—Are Governed by the Same Rules of Law as Are Combinations of Capital in Restraint of Trade.**—Neither a labor union nor its members may, under the law, use any means of coercion or intimidation to compel others to join the union, or to prevent a member from leaving the union if he desires or otherwise to interfere with the inherent right of the individual, whether a member or not, to dispose of his own labor or capital according to his own will; and in their relations to the general public as consumers of the products of labor and capital such unions are governed by the same rules of law as to combinations in restraint of trade as are combinations of capital. *Ib.* 5—547
12. **Under Common Law, Must Be Considered in Its Relation to Its Members, Its Employers, and the Public.**—Under the common law which governs in West Virginia, labor union combinations must be considered in their threefold relations: (a) To their own members; (b) to those who may employ such members; and (c) to the public interests. *Ib.* 5—546
13. **Same—Can Not Require Members to Surrender Their Freedom of Action.**—In their relation to their respective members, labor unions can not undertake to require, by oath, obligation, constitution, or rule, a surrender by such members of their individual freedom of action, and, when they seek to do so, they become illegal combinations in restraint of trade. *Ib.* 5—546
14. **Same—Legality of, to Be Determined by an Examination of Its Constitution, By-Laws, or Rules.**—The question of the legality of a labor union combination is to be determined from an examination of the union's constitution, by-laws, or rules, as they may be called, and, where some of such rules are lawful, yet, if others unlawful in character are of such weight and importance as to dominate the course of the union's action, or if the lawful and unlawful ones are so interdependent or intermingled as to render their separation impracticable, the organization becomes wholly illegal as in restraint of trade. *Ib.* 5—546
15. **The Ancient English Rule That Labor Unions Were Unlawful Does Not Prevail in the United States.**—The ancient English rule that labor unions were unlawful does not prevail in the United States in view of the changed conditions existing; the rule being now settled that labor may organize for its own protection and to further the interests of the laboring classes, and may strike and persuade and induce others to join them by peaceable means, being only subject to legal restraint by injunction when they resort to unlawful means to cause injury to others to whom they have no relation, contractual or otherwise. *Mitchell v. Hitchman Coal & Coke Co.*, 214 F., 469. 5—605

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16. **Same—United Mine Workers of America Not an Unlawful Combination Either Under the State Statute or the Common Law.**—Section 413, Code of West Virginia, provides that no persons or combination of persons, by force, threats, menaces, or intimidation of any kind, shall prevent or attempt to prevent from working in or about any mine any person or persons who have the lawful right to work about the same and who desire to so work, but this provision shall not be so construed as to prevent persons from associating for any lawful purpose or for using moral suasion or lawful argument to induce any one not to work in or about any mine, and section 2859 (Code 1913) regulates the use of union labels and prohibits the use thereon on merchandise not the product of union labor. *Held*, that the trade-union known as the United Mine Workers of America, organized to secure reasonable wages and better working conditions among the mine workers of the United States and by concerted effort to compel by peaceable means the improvement of mining conditions in the United States, is not an unlawful organization or combination, either under the statute or at common law. *Ib.* 5—620
17. **Same—So Long as Members of, Employ Lawful Means to Induce Persons to Join Union, It Is Not a Conspiracy.**—Since members of a trade-union have a lawful right to induce persons employed in the same general business to join the union in order to secure as high wages as possible, compatible with the successful operation of the business, a combination to accomplish such purposes by peaceable and lawful methods, so long as they refrain from resorting to unlawful measures to effectuate the same, does not constitute a conspiracy. *Ib.* 5—622
- Reversed by Supreme Court, 245 U. S., 229.
18. **Members of, May Be Restrained by Injunction from Using Violence and Coercion in Inducing Employees to Join the Union and to Strike.**—An injunction may be properly granted restraining members of a trade union from using violence, intimidation, and coercion to induce employees to join the union and to strike, but they may not be lawfully restrained from using persuasion and other peaceable methods to that end, or from aiding employees by furnishing them money from a relief fund. *Bittner v. West Virginia-Pittsburgh Coal Co.*, 214 F., 717. 5—636
19. **Members of, Have Right to Persuade Others Not to Work for Their Employer.**—Laborers may combine, forming unions to protect their rights, and they have the right to persuade others, when they have gone on strike, not to work for the employer; such rights being given under the freedom of action guaranteed by the Federal Constitution. *Alaska S. S. Co. v. Inter. Longshoremen's Ass'n*, 236 F., 970. 6—681

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- 20. Same—Union Conducting a Strike, Liable for Unlawful Acts of Members and Others Associating with Strikers.**—A trade union, conducting a strike, is liable for the unlawful acts of members and others associating themselves with the strikers, unless such acts be disavowed, and, in the case of members, the offenders be disciplined or expelled. *Id.* 6—684
- 21. Members of, by Striking, Do Not Fully Terminate Relationship Between Themselves and Their Employer.**—A labor union, of which former employees engaged in a strike were members, is not a mere intermeddler, whose interference with other employees may be restrained, when only lawful means are used, since a strike does not fully terminate the relationship between the parties, but creates a relationship, neither that of general employer and employee, nor that of general employer and employee, nor that of employers and employees seeking work from them as strangers. *Tri-City Trades Council v. American Steel Foundries*, 238 F., 733. 6—919
- 22. When Members of, Can Not Be Enjoined, Unless Special Damage Shown.**—Members of can not be enjoined, under the laws of New York, from refusing to work upon materials made by non-union labor, where it was not shown that such refusal had caused the plaintiffs special damage, different from that inflicted upon the public at large. *Paine Lumber Co. v. Neal*, 244 U. S., 471. 6—963
- See also* COMBINATIONS, ETC., IN RESTRAINT OF TRADE, 232-256, 376; COURTS, 10, 11.

LEASES.

With Tying Clauses, Requiring Lessee to Use Only Machines of, and to Purchase Repairs and Supplies from, the Lessor, Is Illegal Under the Clayton Law.—Leases, by the maker of a very large percentage of all the shoe machinery made in the United States, of machines to shoe manufacturers, consisting of principal and auxiliary machines, the use of both kinds being necessary in the completion of a shoe, which leases contain provisions that the lessee shall not use the machine in the manufacture of footwear which has not had certain essential operations performed upon it by other machines leased from the lessor, that he shall use the leased machines exclusively for the class of work for which it is designed, that he shall obtain all duplicate parts and all supplies for the machine exclusively from the lessor at such prices as it may establish and other similar provisions, and which further give the lessor the right to remove all leased machines in the event of the violation by the lessee of any term of any one of the leases, *Held*, on motion for preliminary injunction, illegal, as in violation of the Clayton Law. *U. S. v. United Shoe Mach. Co.*, 227 F., 508. 6—786

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LEGAL PRESUMPTIONS.

1. **When Article Sold Adapted Only to Infringing Use, Presumption Is It Was so Intended.**—A bare supposition that an article adapted for use in connection with a patented machine sold under restricted license is to be used in connection therewith, will not make the vendor a contributory infringer, but where the article so sold is only adapted to an infringing use, there is a presumption that it is intended therefor. *Henry v. A. B. Dick Co.*, 224 U. S., 48. 6—774
2. **Persons Engaging in Conspiracy Which Directly Produces Result Prohibited by a Statute, Are Presumed to Intend That Result.**—Persons purposely engaging in a conspiracy which necessarily and directly produces the result which a prohibitory statute is designed to prevent are, in legal contemplation, chargeable with intending to produce that result; and so held that if the details of the conspiracy are alleged in the indictment, an allegation of specific intent to produce the natural results is not essential. *U. S. v. Patten*, 226 U. S., 543. 4—759
3. **Same.**—Persons engaging in a conspiracy which necessarily and directly will impede and burden interstate commerce, contrary to section 1 of the Sherman Law, making it a criminal offense to engage in a conspiracy in restraint of interstate commerce, are chargeable with intending that result. *Ib.*, 57 L. Ed., 333. 4—759
4. **Defendants Are Presumed to Have Intended Consequences of Acts Where They Are Necessarily in Restraint of Trade.**—If an indictment under the Sherman Law charges acts on the part of defendants which are in fact and necessarily in restraint of interstate trade and commerce, or effect a monopoly of some part of such commerce, by wrongfully injuring or destroying the business of competitors, defendants are presumed to have intended such consequences, and to have known that their acts were in violation of the statute. *U. S. v. Patterson et al.*, 201 F., 715. 5—28
5. **A conspiracy proved to have been formed is presumed to have continued until its object was accomplished.** *Steers v. U. S.*, 192 F., 8. 4—437

LIABILITY. See STATUTES, 134.

LICENSE CONTRACT.

Attempt by Patentee, by Means of, to Retain Title to Patented Article, for Purpose of Controlling Resale Price of Article, Not Protected by Patent Law.—An attempt by means of "license contracts" with dealers and "license notices" attached to patented machines to retain title in the manufacturer and patent owner until the expiration of the latest patent referred to in such notice, and to limit until the expiration of such period the right of the public to a mere license to

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use dependent upon observance of conditions in the "license notices," including conditions as to price, will not be regarded as a legitimate exercise of the patent owner's control over the use where, plainly, from the terms of the "license notices" and from the relations established between the patent owner and the dealers through whom the machines are distributed, the object of such reservations and restrictions is to enable the patent owner to fix and maintain the prices at which the machines may be disposed of after they have passed from his possession into the possession of the dealers and the public and after it has received from the dealers the full price which it asks or expects for the machines. *Straus v. Victor Talking Machine Co.*, 243 U. S., 501.

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LICENSE RESTRICTION.

May be Imposed by Patentee on Sale of Patented Article.—A license restriction may lawfully be imposed on the purchaser of a rotary mimeograph, that the machines sold may be used only with the stencil paper, ink, and other supplies made by the patentee, although they are all unpatented. *Henry v. A. B. Dick Co.*, 56 L. Ed., 645.

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LICORICE PASTE TRUST. See *U. S. v. MACANDREWS & FORBES CO.*, 149 F., 823.

LIMITATION OF ACTIONS.

1. The Three-Year Limitation Under Section 1044 Applies to Proceedings to Punish for Contempt.—The provision in Revised Statutes, section 1044, that no person shall be prosecuted for an offense not capital unless the indictment is found or information instituted within three years after commission of the offense, applies to acts of contempt not committed in the presence of the court. *Gompers v. U. S.*, 233 U. S., 607.

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2. Same—Contempts Not Taken Out of Statute Because Procedure Is by Other Methods Than Indictment or Information.—The substantive portion of section 1044, Revised Statutes, is that no person shall be tried for any offense not capital except within the specified time, and the reference to form of procedure by indictment or information does not take contempts out of the statute because the procedure is by other methods than indictment or information. *Ib.*

4—799

3. Same—In Punishment of Crime if Congress Has Not Laid Down a Limitation the Court Should.—In dealing with the punishment of crime, some rule as to limitations should be laid down, if not by Congress, by this court. *Ib.*

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4. Same—By Policy of the Law and Analogy, the Court Fixes Three Years as Limit Within Which Contempts Can Be Punished.—As the power to punish for contempt has some limit, this court

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regards that limit to have been established as three years by the policy of the law, if not by statute, by analogy. *Ib.*

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5. Same—Statute Begins to Run as Respects Each Specific Act, Upon Date of Its Commission.—The running of the three years' limitation prescribed by Revised Statute, section 1044, for criminal prosecutions against proceedings to punish criminal contempts of a decree enjoining the continuance of a boycott, was not postponed until such boycott was abandoned, but such statute began to run as respects each specific act charged as a substantive offense in disobedience of the injunction upon the date of the commission of such act. *Ib.*, 58 L. Ed., 1115.

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6. Same—Criminal Contempts Not Committed in Presence of Court, Not Punishable After Three Years.—Proceedings to punish acts not committed in the presence of the court as criminal contempts of an injunction previously granted are none the less governed by the three years' limitation of Revised Statute, section 1044, which provides that "no person shall be prosecuted, tried, or punished for any offense not capital * * * unless the indictment is found or the information is instituted within three years next after such offense shall have been committed," because such contempt proceedings may not be instituted by an indictment or information. *Ib.*

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7. Of Three Years Applies to Conspiracies Under the Sherman Law.—Under an indictment charging the officers and agents of the N. Company with conspiring to restrain the interstate business of the N. Company's competitors, which proceeded on the theory that there was a generic conspiracy extending over 20 years against all competitors, which as the various competitors named in the indictment came into existence was directed against them specifically, a conviction could be had only for conspiring in restraint of the trade or commerce of such of the competitors named in the indictment as were in existence during the three years prior to the finding of the indictment, and there could be no conviction for conspiring against the competitors who ceased to exist more than three years prior to the finding of the indictment, or for the generic conspiracy so far as it existed prior to the three years. *Patterson v. U. S.*, 222 F., 627.

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8. In the State of Washington an Action for Damages Under the Sherman Law Is Properly Brought Within Three Years.—The Sherman Law, section 7, provides that any person who shall be injured in his business or property by any other person or corporation, by anything forbidden or declared to be unlawful by that act, may sue therefor and recover threefold the damages by him sustained, with costs and a reasonable

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attorney's fee. Rem. & Bal. Code, Wash., section 159, subdivision 2, requires an action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not thereafter enumerated to be brought within three years. Subdivision 6 requires an action upon a statute for a penalty or forfeiture, where an action is given to the party aggrieved, or to such party and the State, to be brought within three years, except when the statute imposing it prescribes a different limitation. Section 165 provides that an action for relief not thereinbefore provided shall be commenced within two years. *Held*, that an action for damages under the Sherman Act is properly brought within three years, as the statute upon which recovery is predicated is penal, while the right of recovery under section 7 is private and remedial, and under any view of the provisions of section 159, the two year limitation does not apply. *Harvey v. Booth Fisheries Co.*, 228 F., 787. e—398

See also ACTIONS AND DEFENSES, 71.

LIQUOR TRAFFIC. *See* COMBINATIONS, ETC., 380; COURTS, 3.

LIVE-STOCK ASSOCIATIONS AND EXCHANGES, ETC. *See* COMBINATIONS, ETC., 159-163, 322-331.

LUMBER. *See* COMBINATIONS, ETC., 88-90, 263, 264, 374, 375.

MAILS, OBSTRUCTION OF. *See* COMBINATIONS, ETC., 246, 248, 252.

MANDATE.

Modified as to certain companies having some of the 65 per cent contracts referred to in 226 U. S., 324, *U. S. v. Reading Co.*, 227 U. S., 158. 4—739

MANUFACTURER.

1. Sending Circulars to His Customers Requesting Them Not to sell His Products to a Particular Dealer, Is Within His Legal Rights.—The sending out by a manufacturer of circulars to wholesale dealers, who are its customers, requesting them not to sell its product to a particular dealer, on the ground that he is cutting retail prices, is within its legal rights, and can not be enjoined. *Great Atl. & Pac. Tea Co. v. Cream of Wheat Co.*, 224 F., 571. 5—866

2. Same—Selling Only to Wholesalers and Refusing to Sell to Retailers Not Unlawful.—Defendant was engaged in selling under a trade name purified wheat middlings selected by it and put up in packages. Its whole business covered less than 1 per cent of the total middlings bought and sold in the country. It decided to sell only to wholesalers, and so announced to the trade, but for a time made an exception as to a particular retailer. It afterwards decided that it would no longer sell to such retailer, and did not thereafter sell to him. *Held*, that this was not unlawful, and such retailer was not entitled to an injunction restraining defendant from

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refusing to sell its goods to it, and it was wholly immaterial why it ceased to sell to such retailer, as neither the Sherman Law, nor the Clayton Law, has changed the rule that a trader may reject the offer of a proposing buyer for any reason that appeals to him, whether it be because he does not like the buyer's business methods, or because of some personal difference. *Great Atl. & Pac. Tea Co. v. Cream of Wheat Co.*, 227 F., 48. 5—876

3. **May Not Induce Violation of Law.**—No man may wilfully and knowingly use his money, his industry, his brains, or his right to pick and choose among his would-be customers to induce or bring about a violation of law, or to do or procure the doing of some act which the law forbids.

Frey & Son v. Welch Grape Juice Co. (Not reported.) 6—869

Frey & Son v. Cudahy Packing Co. (Not reported.) 6—879

4. **Same—Right of, to Choose His Customers.**—In the absence of a statutory prohibition, any man engaged in business may pick and choose, as he sees fit, his would-be customers. *Ib.*

6—867; 6—878

5. **Same—Discrimination by, in Price of Commodity, Between Different Customers, Unlawful.**—A discrimination in price by a manufacturer between different purchasers of his commodity, under section 2 of the Clayton Law, is an unlawful thing, whether there was a combination in the furtherance of which it was made, or not; but in order to recover damages for such a discrimination, it must appear that the effect of such discrimination is substantially to lessen competition. *Ib.*

6—875; 6—885

See also COMBINATIONS, ETC., 309-321.

MARKET QUOTATIONS. *See* COMBINATIONS, ETC., 332-335.

MINNESOTA.

1. **Anti-Trust Law of Minnesota Should Receive the Same Construction as the Sherman Law.**—The anti-trust law of Minnesota (Laws 1899, p. 487, c. 349), making unlawful any contract or combination in restraint of trade or commerce within the State, is in substantially the same language as the Sherman Law, and must receive a similar construction. *Minnesota v. Northern Securities Co.*, 123 F., 692. 2—246

Case reversed, 194 U. S., 48, and remanded to State court. Circuit court without jurisdiction (2—533).

2. **Following the decisions of the United States Supreme Court construing the latter act, the Minnesota law applies to railroads, and any contract or arrangement between railroad companies for the purpose and having the effect of preventing competition by fixing rates to be maintained by the parties is in violation of its provisions; but contracts or combinations which do not directly and necessarily affect transportation, or rates therefor, are not in restraint of**

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trade or commerce, nor within the statute, even though they may remotely and indirectly appear to have some probable effect in that direction. *Ib.* 2—259

3. Same—Stockholding Corporation.—A holding corporation organized by individual stockholders of two railroad companies, owning and operating substantially parallel and competing lines of railroad within the State of Minnesota, for the sole purpose of acquiring, by the exchange of its own stock therefor, stock of the two companies, and holding and voting the same, but having no power or franchise to operate a railroad, is not in violation of the Minnesota anti-trust law (Laws 1899, p. 487, c. 359), which provides that "any contract, agreement, arrangement, or conspiracy, or any combination in the form of a trust or otherwise * * * which is in restraint of trade or commerce within this State * * * is hereby prohibited and declared to be unlawful," where the purpose of its promoters was thereby to acquire and retain in the same hands a majority of the stock of one or both companies, to insure uniformity of policy and stability of management, although it in fact acquired the controlling interest in both, in the absence of any evidence that it ever exercised its power to prevent competition between the two roads or to interfere in any manner with the fixing of rates by either company. *Ib.*

2—280

4. Same—Enforcement of Statute—Jurisdiction or Equity.—The anti-trust law of Minnesota (Laws 1899, p. 487, c. 359) imposes severe penalties for its violation, but contains no provision for restraining or enjoining violations, and without such statutory authority a court of equity has no jurisdiction to enjoin an act which constitutes a criminal offense. *Ib.*

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MONOPOLIZE.

1. To "Monopolize," in a Legal and Accurate Sense, Is to Exclude Other Persons, But Not Necessarily All.—Within section 2 of the Sherman Law, making it illegal to monopolize, attempt to monopolize, or combine or conspire to monopolize, any part of the trade or commerce among the several States, there can be no monopolizing in making a single interstate sale, or a great number of such sales, even though wrongful means are used in making them, and a wrong of some other nature is done competitors, since to "monopolize" in a legal and accurate sense is to exclude other persons, though not necessarily all persons, and there can be no monopolizing with respect to a sale which in the nature of things can be made by but one competitor, and in which there can be no common occupation. *Patterson v. U. S.*, 222 F., 619.

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2. **Same—A Monopolizing by Efficiency in Production, Not Within the Sherman Law.**—A monopolizing of interstate trade and commerce by efficiency in producing and marketing a better and cheaper article than anyone else, is not within section 2 of the Sherman Law. *Ib.* 5—92
3. **Same—Excluding of Competitors, by Wrongful Means, Is Monopolizing.**—A combination of competitors, accompanied by an exclusion of outsiders from interstate trade and commerce, or the exclusion by a competitor, or its officers and agents on its behalf, of other competitors, by the use of wrongful means, constitutes a monopolizing of such commerce within section 2 of the Sherman Law. *Ib.* 5—93
4. **One Does Not Continue to, by Holding the Business Wrongfully Secured, After Competitors Have Ceased to Compete.**—A party monopolizing interstate commerce by employing wrongful means to drive its competitors from the field does not continue to monopolize such commerce, within section 2 of the Sherman Law, by holding the business so secured after its competitors have ceased to compete; and hence an indictment charging a monopolizing within the period of limitations by holding the business previously obtained by such wrongful means was insufficient, where it did not allege the doing of anything to maintain and hold the monopoly during such period. *Ib.* 5—101

MONOPOLY.

1. **Need Not Be a Complete Monopoly.**—In order to vitiate a contract or combination it is not essential that its result should be a complete monopoly; it is sufficient if it really tends to that end and to deprive the public of the advantages which flow from free competition. *U. S. v. E. C. Knight Co.*, 156 U. S. 1, 16. 1—392
2. **Congress did not attempt by the Sherman Law to assert the power to deal with monopoly directly as such; or to limit and restrict the rights of corporations created by the States or the citizens of the States in the acquisition, control, or disposition of property; or to regulate or prescribe the price or prices at which such property or the products thereof should be sold; or to make criminal the acts of persons in the acquisition and control of property which the States of their residence or creation sanctioned or permitted. Aside from the provisions applicable where Congress might exercise municipal power, what the law struck at was combinations, contracts, and conspiracies to monopolize trade and commerce among the several States or with foreign nations.** *Ib.* 1—392
3. **The word "monopolize" was not intended to be used with reference to the acquisition of exclusive rights under Government concession, but the word was used to mean "to aggre-**

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gate" or "concentrate" in the hands of few, practically, and, as a matter of fact, and according to the known results of human action, to the exclusion of others; to accomplish this end by what, in popular language, is expressed in the word "pooling," which may be defined to be an aggregation of property or capital belonging to different persons, with a view to common liabilities and profits. *Amer. Biscuit & Mfg. Co. v. Klotz*, 44 F., 721, 724. 1—7

4. To constitute the offense of "monopolizing, or attempting to monopolize," trade or commerce among the States, within the meaning of section 2 of said act, it is necessary to acquire, or attempt to acquire, an exclusive right in such commerce by means which will prevent others from engaging therein. *In re Greene*, 52 F., 104. 1—54
5. A "monopoly," in the prohibited sense, involves the element of an exclusive privilege or grant which restrained others from the exercise of a right or liberty which they had before the monopoly was secured. In commercial law, it is the abuse of free commerce, by which one or more individuals have procured the advantage of selling alone or exclusively all of a particular kind of merchandise or commodity to the detriment of the public. *Ib.* 1—71
6. The word "monopolize," used in section 2 of the Sherman Law, is the basis and limitation of the statute, and hence an indictment must show a conspiracy in restraint by engrossing or monopolizing or grasping the market. It is not sufficient simply to allege a purpose to drive certain competitors out of the field by violence, annoyance, intimidation, or otherwise. *U. S. v. Patterson*, 55 F., 605. 1—183
7. The statute is not limited to contracts or combinations which monopolize interstate commerce in any given commodity, but seeks to reach those which directly restrain or impair the freedom of interstate trade. The law reaches combinations which may fall short of complete control of a trade or business, and does not await the consolidation of many small combinations into the huge "trust" which shall control the production and sale of a commodity. *Chesapeake & O. Fuel Co. v. United States*, 115 F., 610, 624. 2—168
8. Monopoly Not Necessary—Tendency Sufficient.—It is not required, in order to violate this statute, that a monopoly be created. It is sufficient if that be the necessary tendency of the agreement. *Ib.* 2—168
9. Every attempt to monopolize a part of interstate commerce, the necessary effect of which is to stifle or to directly and substantially restrict competition in commerce among the States, violates section 2 of the Sherman Law. *Whitwell v. Continental Tobacco Co.*, 125 F., 454. 2—271

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10. Attempts to monopolize a part of commerce among the States which promote, or only incidentally or indirectly restrict, competition in interstate commerce, while their main purpose and chief effect are to increase the trade and foster the business of those who make them, were not intended to be, and were not, made illegal or punishable by section 2 of the Sherman Law, because such attempts are indispensable to the existence of any competition in commerce among the States. *Ib.* 2—276
11. Statute Operates Only on Monopolies in Interstate Commerce, and Not Because Commodity Is a Necessary of Life.—The monopoly and restraint denounced by the Sherman Law, "to protect trade and commerce against unlawful restraints and monopolies," are a monopoly in interstate and international trade or commerce, and not a monopoly in the manufacture of a necessary of life. *U. S. v. E. C. Knight Co.*, 156 U. S., 1. 1—379
12. A monopoly of trade embraces two essential elements: (1) The acquisition of an exclusive right to, or the exclusive control of, that trade; and (2) the exclusion of all others from that right and control. *U. S. v. Trans-Mo. Ft. Assn.*, 58 F., 58, 82. 1—218
13. Criterion of Monopoly.—The mere extent of acquisition of business or property achieved by fair and lawful means can not be the criterion of monopoly within the meaning of the Sherman Law; but in addition to acquisition and acquirement there must be an intent by unlawful means to exclude others from the same traffic or business, or from acquiring by the same means property and material things. (Per Gray, C. J.) *U. S. v. Reading Co.*, 183 F., 456. 3—908
14. Unlawful at Common Law.—At common law monopolies were unlawful because of their restriction upon individual freedom of contract and their injury to the public and at common law; and contracts creating the same evils were brought within the prohibition as impeding the due course of, or being in restraint of, trade. *Standard Oil Co. v. U. S.*, 221 U. S., 54. 4—124
15. Same.—The early struggle in England against the power to create monopolies resulted in establishing that those institutions were incompatible with the English Constitution. *Ib.* 4—122
16. Use of Patented Article.—In spite of the Sherman Law, the patentee may monopolize for the term of his patent the thing which he or his assignor invented. If by the common law, or the statutes of a State, or by the enactments of Congress, men are forbidden to restrain trade or to monopolize it, a patentee may not restrain trade or attempt to mo-

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nopolize it in anything except that which is covered by his patent. *U. S. v. Standard Sanitary Mfg. Co.*, 191 F., 190.

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17. **State Monopoly of Liquor Traffic.**—The Sherman Law is not applicable to the case of a State which by its laws assumes an entire monopoly in the traffic in intoxicating liquors (S. C. act of Jan. 2, 1895). *Lowenstein v. Evans*, 69 F., 908.

1—589

18. **Validity of Sale of Property Where Object Is Monopoly.**—The sale and transfer by a corporation of its property and good will to another corporation, where such sale was within its powers, can not be repudiated on the ground that the purchaser acquired the property for the purpose of obtaining a monopoly of the business and in pursuance of an illegal combination in restraint of trade. *Metcalf v. Amer. School Furniture Co.*, 122 F., 115.

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See also COMBINATIONS, ETC., IN RESTRAINT OF TRADE, II and III.

19. **Rebate to Exclusive Purchasers.**—An arrangement whereby a distillery company promised persons who purchased from its distributing agents that if, for the ensuing six months, they would purchase their distillery products exclusively from such agents and would not resell the same at prices less than those fixed by the company, then, on being furnished with a certificate of compliance therewith, it would pay a certain rebate on the amount of such purchases, did not operate to "monopolize," or "as an attempt to monopolize," trade and commerce, within the meaning of section 2 of said act. *In re Greene*, 52 F., 104.

1—56

20. **When Stock of Competing Company Not Invalidated by Purchase by Rival Company.**—Purchase by one corporation engaged in foreign commerce of a controlling interest in the stock of a competing company similarly engaged, for the purpose of eliminating competition, though invalid in so far as the right to vote the stock is concerned, does not invalidate the stock so as to preclude the purchasing company from transferring the same to another in good faith, and conferring the right to vote the stock so transferred on the purchaser in case the transfer is without suspicion of retained control, and the purchaser is not otherwise prohibited by law from voting the stock. *Steele v. United Fruit Co.*, 190 F., 636.

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21. **Same—Acquisition of Control of Competing Corporations.**—Evidence held to warrant findings that defendant fruit company, engaged in foreign commerce, acquired a controlling interest in a competing steamship corporation to control its operation, prevent competition, and the increase of its

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business by the addition of new capital, and that a subsequent sale of such stock to individuals was formal only, and not intended in good faith to divest the fruit company of its control, authorizing an injunction restraining it or the purchasers from voting the stock in the fruit company's interest. *Ib.* 4—392

22. **Combinations in Restraint of Interstate Commerce—Contracts Between Coal Producers.**—For many years small producers of coal in the anthracite regions of Pennsylvania had sold their product to contiguous large operators, who took it at the breakers and shipped and marketed the same through their own agencies, paying to the sellers therefor a certain percentage of tidewater prices, differing under different contracts. During a general strike of all anthracite miners, at a conference between the producers, in order to induce the selling operators to assent to a settlement by which all miners were to receive increased pay, the purchasing companies agreed to contract with the selling producers under an agreed form of contract by which the purchaser bought the entire product of the seller's mines, to be mined and delivered as the buyer directed, which it agreed should be the seller's just proportion of all the anthracite coal which the requirements of the market might from time to time demand. The purchasers were also to pay an increased percentage based on the general average price at tidewater during the month, to be determined by an expert accountant. The making of such a contract was optional with each seller; but several were made, and the accountant made reports which were furnished to all parties interested, and also published in trade journals. *Held*, That such agreement did not constitute nor evidence a combination or conspiracy on the part of the purchasing companies to restrain or monopolize the sale or control the price of coal in interstate commerce in violation of the Sherman Law, but was the legitimate outgrowth of peculiar business conditions, and was to the advantage of the smaller producers by utilizing for the handling of their product the facilities and agencies of the larger companies. (Per *Gray*, C. J., *Buffington*, C. J., dissenting.) *U. S. v. Reading Co.*, 183 F., 454. 3—905

23. **Control of Competing Corporation.**—The control by one mining corporation organized under the laws of Michigan of another similar corporation engaged in a competing business in interstate and foreign commerce by acquiring a majority of its stock, or in part by acquiring stock and in part by soliciting and obtaining proxies from other stockholders with the purpose and intention of eliminating competition and obtaining a monopoly of trade in their products,

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either complete or partial, is in violation of the Sherman Law, which makes unlawful every combination in restraint of interstate or foreign trade and commerce, and also of Pub. Acts Mich. 1899, p. 409, No. 255, as supplemented by Pub. Acts Mich. 1905, p. 507, No. 329, prohibiting all combinations entered into for the purpose and with the intent of establishing and maintaining a monopoly; nor is such transaction relieved from its invalidity under the latter statute by Pub. Acts Mich. 1905, pp. 153, 154, No. 105, which authorizes mining corporations of the State to purchase and own stock in other similar corporations. *Bigelow v. Calumet & Hecla Mining Co.*, 155 F., 874. 3—301

24. **Purchase of Stock of Competing Corporation.**—The purchase of a controlling interest in the stock of a sugar refining corporation, to acquire control thereof and prevent the corporation from refining sugar in competition with the purchaser, that the latter might control the business of refining sugar for sale in the United States, does not involve a monopoly or combination in restraint of commerce within the State, in violation of section 7 of the Sherman Law, as the manufacture of sugar does not constitute trade or commerce and only incidentally affects it. *Penna. Sugar Ref. Co. v. American Sugar Ref. Co.*, 160 F., 145. 3—371

25. **An Indictment for Monopolizing, Alleging That Pursuant to a Conspiracy Defendants Monopolized Part of the Trade in a Single Article, Held Good.**—An indictment for monopolizing a part of interstate trade and commerce, in violation of the Sherman Law, sufficiently charges such monopoly, where it alleges that pursuant to a conspiracy therefor defendants monopolized a part of the trade in a single article entering into such commerce. *U. S. v. Patterson et al.*, 201 F., 723. 5—40

26. **Same—Having Acquired a Monopoly, Its Continuance After Purpose of Conspiracy Is Accomplished, Is in Itself an Offense Under the Sherman Law.**—Where defendants acquired a monopoly in a part of interstate commerce through a conspiracy for the purpose, the continuance of such monopoly after the conspiracy has accomplished its purpose and ceased to exist is in itself an offense under the Sherman Law, and the conspirators are criminally liable therefor, although the business is conducted by a corporation which is controlled by them. *Ib.* 5—41

Reversed, 222 F., 599. (5—60).

27. **Public Policy Regarding, of Federal Government and State of Ohio the Same.**—In general, the policies of the State of Ohio and of the United States regarding monopolies and restrictions of competition are the same; the rule being that of the

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common law, declared for Ohio by the Valentine Law, and for the United States by the Sherman Law. *U. S. Tel. Co. v. Cent. Union Tel. Co.*, 202 F., 70. 4—885

28. A "Monopoly," at common law, and under the Sherman Law, implies a control of goods or service which the public desires; and an "attempt to monopolize" is an attempt to obtain control of an industry by means which prevent others from engaging in fair competition. *U. S. v. Whiting*, 212 F., 478. 5—464
29. Same—While there can be no monopoly which is not an unreasonable restraint of trade, there may be unreasonable restraints which are not monopolies. *Ib.* 5—464
30. Same—Certain Combination Held Not Guilty of Attempting to Monopolize the Trade in Milk in Boston.—Persons engaged in the business of buying milk and selling it at retail in designated localities formed a combination whereby they agreed not to offer or pay more than a specified price for milk purchased by them for resale. It did not appear that the combination in any way enlarged their control of the business, either by forcing down the price at which they bought, so that they could undersell competitors in the selling market or otherwise. The agreement was made with the intent to wrong the public and to oppress and limit the rights of milk producers by depriving them of the higher price of milk which would have resulted from free competition. They did not dominate or control the markets in which they sold their milk purchased pursuant to the combination. *Held*, that they were not guilty of attempting to monopolize trade in milk in violation of the Sherman Law. *Ib.* 5—464
31. Usual Meaning of.—The usual meaning of "monopoly" is the acquisition of something for one's self, and while the word is used most appropriately when the whole of a given trade is acquired, the terms of section 2 of the Sherman Law make it applicable to monopolization of a part of trade. *U. S. v. Keystone Watch Case Co.*, 218 F., 516. 5—500
32. The Refusal by an Association of Bill Posters to Accept Advertising from Persons Patronizing Competitors, Whereby a Monopoly Is Established, Is Unlawful.—Where, by an association of bill posters, who refused to accept advertising from persons patronizing competitors, competition was practically stifled and a monopoly established, such monopoly is in violation of the Sherman Law, though the monopoly produced a general improvement in the bill-posting business. *U. S. v. Associated Bill Posters*, 235 F., 541. 6—848
33. Indictment for Engaging in, Need Not Set Out Overt Act.—An indictment for combining and engaging in a monopoly in restraint of interstate trade and commerce need not set out any overt act, as the combination or contract in any form in

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restraint of trade constitutes the offense under the statute, and it is only essential to charge the combination or contract. *U. S. v. Cowell*, 243 F., 731. 6—1005

34. Same—Indictment for Engaging in Between Specified Dates Sufficiently Alleges Time of Offense.—An indictment for combining and engaging in a monopoly in restraint of interstate commerce sufficiently alleges the time of the offense by alleging that the parties were engaged in the unlawful combination or contract between specified dates, as the offense is a continuing one and the parties are transgressing the statute while engaged in the operation of the design or in carrying it into effect. *Ib.* 6—1005
35. Same—Indictment for Engaging in, Must Give Particulars.—An indictment for combining and engaging in a monopoly in restraint of interstate trade and commerce must give particulars, and not rely simply on the words of the statute. *Ib.* 6—1006
36. Unfair Acts Which Are Part of Attempt to Monopolize, Are a Subject for Damages.—Where a company attempted to monopolize the manufacture and sale of coated wire nails, and as part of its plan engaged in various illegal and unfair practices, such as hindering its competitors from obtaining raw materials and the necessary machines, bribing their factory employees to disclose factory conditions and to send out defective goods, and bribing office employees to disclose the names of their customers and their contracts, and then selling to such customers below cost, a competitor attacked in these ways had a right of action for damages, under the Sherman Law, since, while no action lies under that act for unfair practices, damages are recoverable thereunder for monopolizing, or attempting to monopolize, and acts which are a part of the monopolizing, or attempting to monopolize. are a subject for damages. *American Steel Co. v. American Steel & Wire Co.*, 244 F., 302. 6—1021
37. Combination of Corporations Selling Machinery Not Competing, but Supplementing, Not in Restraint of Trade.—Combinations of several corporations, each selling or leasing machinery intended for different operations, not competing, but supplementing each other, does not ordinarily constitute a monopoly in restraint of trade. *U. S. v. Winslow*, 195 F., 591. 5—190
38. Contract Between Company and Labor Union, Concerning Wages, etc., Not Objectionable as Tending to Monopoly.—A contract between a manufacturing corporation and a labor union, by which the corporation thereafter agreed to pay union wages and to comply with the union hours of labor and conditions of employment, but which contained no direct provision binding the corporation not to employ non-union men, was

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not objectionable as tending to create a monopoly in favor of members of the unions to the exclusion of others seeking employment. *Pest v. Bucks Stove & Range Co.*, 200 F., 921.

4—807

39. Evidence Against the "Steel Corporation" Considered, and Held Insufficient to Establish Any Purpose to Create a Monopoly or to Unduly Restrain Trade.—The United States Steel Corporation was organized by the consolidation of a number of large steel-making concerns in 1901. During the ensuing ten years previous to suit it at all times had active and increasing competition. It manufactured about half of the steel produced in the United States, and its proportionate part during that time decreased in nearly all lines. The testimony, largely of competitors and customers, showed that it has been fair to competitors, has steadily increased its production, and that, while competition has been close, it has abstained from radical cutting of prices, and has usually publicly announced its prices in advance and maintained the same; that with the exception of a short intermediate period none of its prices have been the result of agreement with other manufacturers, but all have been independently adopted, have been reasonable and conservative, and have helped to keep the market steady. Several competitors testified that they did not believe it possible for it to force them out of business or obtain a monopoly of the steel-making industry. *Held*, that such evidence was insufficient to establish any purpose, either in the organization of the corporation or in the conduct of its business, to create a monopoly or to unduly restrain trade to the detriment of the public, in violation of the Sherman Law. *U. S. v. U. S. Steel Corporation*, 223 F., 97. 6—63
40. Same—History of Steel Corporation Reviewed, and Held to Show the Consolidation Was the Natural Outgrowth of Changed Conditions in the Trade.—The history of the organization of the United States Steel Corporation in 1901 reviewed, and *Held* not to evidence any intention or purpose on the part of the organizers to monopolize or restrain trade, especially in view of the fact that no such thing was attempted, but to show that the consolidation was the natural outgrowth of the changing conditions in the trade in its transition from iron to steel, and the tendency to integrate the plants back to ore-supply and forward to the finished products, and to secure greater economy of management and large capital necessary to meet the demands of structural contracts and the development of export trade. *Ib.* 6—88
41. Where a Railroad Company Owns 18 Per Cent of Contiguous Coal-Mining Lands, Which Is Less Than 27 Per Cent of the Coal Lands Tributary to It, and Carries About 18 Per Cent

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of All Coal Transported, There is No Monopoly of Interstate Commerce.—Where a railroad company has acquired about 18 per cent of contiguous coal mining lands, the acreage of which represents less than 27 per cent of the coal lands naturally tributary to it, and carries about 18 per cent of all the coal transported, of which percentage four-fifths comes from mines controlled by a company in turn controlled by the carrier, but where there is an honest "disassociation of interests" between coal owner and coal carrier, which is merely the lawful conduct of honest men, and where the carrier does not own stock in any company selling coal beyond the limits of the State wherein the composite business of owning, mining, transporting, and selling coal is legal, there is no monopoly of interstate commerce. *U. S. v. Lehigh Valley R. Co.*, 225 F., 406. 6—290

42. The Leasing, by the Lehigh Coal & Navigation Company, of Its Railroad and Coal Mines to the Central R. R. Co. of New Jersey, With Its Agreement to Ship Its Coal Over the Latter Road, Held Not Intended to Create a Monopoly or to Restrain Competition.—The Lehigh Coal & Navigation Company was the owner of mines and a large acreage of coal lands in the anthracite regions of Pennsylvania, and of a railroad, 180 miles long, with its branches, to which its mines were tributary, and which extended to the Delaware River, where it connected with other roads, including that of the Central Railroad Company of New Jersey. In 1871 it leased its road for a long term to the Central Company, to receive as rental one-third of the gross earnings of the leased road, afterwards modified by fixing a maximum and minimum annual rental. It also agreed to ship all of its coal, with the exception of one-fourth of its production, in the Wyoming region, over the lines of the Central Company whenever destined to points which could be reached wholly or partly over such lines. Such lease is still in force. *Held*, on the evidence, that it was not intended to and did not operate to create monopoly or to restrain competition, in violation of the Sherman Law, either in the production and sale or the transportation of coal, but that, under the circumstances existing at the time it was made, it was a proper business arrangement, advantageous to both parties, by securing to the coal company, whose mines were reached only by the leased lines, a permanent outlet for its coal to the seaboard and elsewhere, which ever since enabled it to compete with other producers, and to the railroad company, a permanent share of the coal of the region for transportation, which it was in danger of losing through combinations and traffic arrangements between other roads. *U. S. v. Reading Co.*, 226 F., 260. 6—335

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43. Same—That a Coal Company, Under Sanction of State Laws, Holds Coal Lands Far in Excess of Its Needs, Does Not Constitute It a Monopoly, etc.—The facts that a coal-mining company, under the sanction of State laws, has acquired and holds large bodies of coal lands far in excess of its present mining needs, and that it mines and sells a large percentage of all the anthracite coal produced, do not of themselves constitute a monopoly or restraint of trade, in violation of the Sherman Law. *Ib.* 6—348
44. The Acquiring, by the Eastman Kodak Co., of About 20 Competing Concerns, Whose Plants Were Dismantled, of Stock Houses, and the Fixing of Resale Prices of Its Products, Whereby It Secured from 75 to 80 Per Cent of the Business in Such Commerce, Resulted in a Monopoly.—The Eastman Kodak Co., of New York, a corporation engaged in the manufacture and sale of photographic apparatus and supplies, including cameras, plates, films, and paper, in the course of some 15 years acquired the ownership of the property and business of about 20 competing concerns throughout the country, whose plants were dismantled and the business discontinued or transferred to its own plants. If corporations, they were for the most part dissolved, and their officers, or the partners, in case of firms, bound by contract not to engage in competing business for terms of from 5 to 20 years. It also by contract with the makers obtained entire control in the United States of the imported raw paper which was recognized as the only standard paper for the manufacture of photographic printing-out paper, and by refusing to sell to other manufacturers compelled several competing companies to sell or go out of business. It acquired stock houses in the larger cities, which handled chiefly its own products, and by contracts with other dealers to whom it sold fixed resale prices and required them to sell its goods exclusively. By such means it secured control of from 75 to 80 per cent of the entire interstate trade in the articles in which it dealt. *Held*, that such methods were intended and calculated to, and did, result in an undue and unreasonable restraint of interstate trade, and in securing to the Eastman Company a "monopoly" of a part thereof, in violation of the Sherman Law. *U. S. v. Eastman Kodak Co.*, 226 F., 80. 5—907
45. Same—While Size Alone Does Not Constitute, It May Be Considered, in Connection with Methods Used, in Determining That Question.—While the size of a corporation and the extent of its business do not alone constitute an illegal monopoly, they may properly be considered when its acquisitions of property are accomplished by methods showing an intention to monopolize and restrain interstate trade, and by an

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arbitrary use of power resulting from a large business to eliminate weaker competitors. *Ib.* 5—907

46. Plan for Dissolution of, Which Does Not Provide for Separating the Various Units, Does Not Afford Relief to Which Government Entitled.—A proposed plan for the abrogation of an illegal monopoly in photographic cameras, films, papers, and plates, which did not provide for the separation of the business of manufacturing the various units of manufacture, did not afford the relief to which the Government was entitled, where the various units were combined with the intention of monopolizing and restraining trade in such products, and their manufacture constituted the monopoly, even though some of such units were fairly non-competing. *U. S. v. Eastman Kodak Co.*, 230 F., 523. 5—911

47. Given by the Trade-Mark Law, Not Forbidden by the Sherman Law.—The monopoly given the owner of a trade-mark by the trade-mark laws is not forbidden by the Sherman Law, or any other act of Congress. *Coca-Cola Co. v. Butler & Sons*, 229 F., 232. 6—412

48. Same—Manufacturer Selling Only to Licensed Bottlers, and Maintaining System of Inspection of Licensed Plants, Not a Violation of the Sherman Law.—Where the manufacturer of a syrup, used as the principal ingredient in a beverage and sold by it only to bottlers licensed by it, guaranteed the purity and quality of the beverage by using distinctive tops and labels on its bottles, and to protect itself against claims for damages on the guaranty maintained a system of inspection of the plants of its licensed bottlers, it did not violate the Sherman Law, as its requirements were reasonable and beneficial to the public, in view of its responsibilities and the right of purchasers to obtain the identical article which they desired to buy. *Ib.* 6—412

49. The Purchase, by One Company Engaged in the Manufacture and Sale of Package Rolled Oats, of the Business of a Competitor, Did Not Create a Monopoly.—In a suit by the Government for an injunction under the Sherman Law, evidence held not to show that a monopoly in fact was created by the purchase, by one company engaged in the manufacture and sale of package rolled oats, of the business of a competitor. *U. S. v. Quaker Oats Co.*, 232 F., 500. 6—431

MOOT QUESTIONS.

Decree Entered After Questions Raised in Pleadings Have Become Moot, Will Be Reversed.—The agreements between British, German, and American steamship companies which were assailed as contrary to the Sherman Law, having necessarily been dissolved by the European war, and the questions raised by the bills having thereby become moot when the de-

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crees of the court below were entered, the decrees are reversed and the cases remanded with directions to dismiss the bills without prejudice—as in *United States v. Hamburg-American Co.*, 239 U. S., 466. *U. S. v. Prince Line, Ltd.*, 242 U. S., 537. 5—684

MOTION TO STRIKE OUT.

1. **Objectionable Matter, not Directly Challenged, May Be Stricken Out.**—In disposing of a motion to strike out a declaration as so defective in form as to prejudice a fair trial of the cause, the court will notice and strike out objectionable parts, although not directly challenged, where necessary to a proper disposition of the motion. *Buckeye Powder Co. v. DuPont Powder Co.*, 196 F., 520. 4—568

2. **Same—General References to Defendants not Served, Will Be Stricken Out.**—In an action for damages under the Sherman Law, where a conspiracy is charged between a large number of persons and corporations named, only those who are served should be declared against as defendants, and the naming of all as defendants in the declaration, together with general references to the defendants, without specifically naming those referred to, constitutes a defect which will be corrected by the court on a motion to strike out the pleading. *Ib.* 4—569

3. **Same—While Pleading Held Good, Irrelevant Allegations May Be Stricken Out.**—The declaration in an action under section 7 of the Sherman Law, to recover damages for the violation of sections 1 and 2 of the law, construed, and held not subject to a motion to strike out for uncertainty and indefiniteness of statement, but certain allegations stricken out as irrelevant. *Ib.* 4—576

MOTIVES.

Good, No Excuse for Unlawful Combination.—A combination is not excusable upon the ground that it was induced by good motives and produced good results. *Thomsen v. Cayser*, 243 U. S., 85. 6—727

MULTIFARIOUSNESS. See ACTIONS AND DEFENSES, 39; PLEADING AND PRACTICE, 50—52.

MUNICIPAL CONTRACTS. See COMBINATIONS, ETC., 377—379.

MUNICIPAL ORDINANCE.

The specification in an ordinance, not invalid under the laws of the State, that a particular kind of asphalt produced only in a foreign country shall be used for street improvements does not violate the Sherman Law or any Federal right. *Field v. Barber Asphalt Paving Co.*, 194 U. S., 618. 2—555

NEW JERSEY. See CORPORATIONS, 4.

NEW TRIAL.

Refusal of, Because of Misconduct of Jury, Will Not Be Disturbed, Except for Abuse of Discretion.—Refusal of a new

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trial on the ground of misconduct of the jury, because having in their possession, during their deliberation, papers not in evidence, is discretionary, and will not be disturbed, except for abuse of discretion. *Buckeye Powder Co. v. DuPont Powder Co.*, 223 F., 889. 4—610

See also REMEDIES, 18.

NON-RESIDENTS. See STATUTES, 128.

NOTE. See ACTIONS AND DEFENSES, 136.

NOTICE. See STATUTES, 125.

OBSTRUCTION OF MAILS.

1. **Obstructing the Mails**—Section 3995, Revised Statutes.—Although the law (section 3995 Revised Statutes) which makes it an offense to obstruct and retard the passage of the United States mails was originally passed prior to the introduction into the United States of the method of transporting mail by railroads, and the phraseology of the law conforms to conditions prevailing at that time (March 3, 1825), yet it is equally applicable to the modern system of conveyance and protects alike the transportation of the mail by the "limited express" and by the old-fashioned stage-coach. *U. S. v. Cassidy*, 67 F., 698. 1—451

2. **Same.**—The statute applies to all persons who "knowingly and willfully" obstruct and retard the passage of the mails or the carrier carrying the same; that is, to those who know that the acts performed, however innocent they may otherwise be, will have the effect of obstructing and retarding the mail, and who perform the acts with the intent that such shall be their operation. *U. S. v. Kirby*, 7 Wall., 485, cited. *Ib.* 1—458

3. **Same.**—The statute also applies to persons who, having in view the accomplishment of other purposes, perform unlawful acts which have the effect of obstructing and retarding the passage of the mails. In such case an intent to obstruct and retard the mails will be imputed to the authors of the unlawful act, although the attainment of other ends may have been their primary object. *U. S. v. Kirby*, 7 Wall., 485, cited. *Ib.* 1—458

4. **Same**—Mail Trains.—A mail train is a train as usually and regularly made up, including not merely a mail car, but such other cars as are usually drawn in the train. If the train usually carries a Pullman car, then such train, as a mail train, would include the Pullman car as a part of its regular make-up. Therefore, if such a train is obstructed or retarded because it draws a Pullman car, it is no defense that the parties so delaying it were willing that the mail should proceed if the Pullman car were left behind. *U. S. v. Clark*, Fed. Cas. No. 14805, 23 Int. Rev. Rec., 306, followed. *Ib.* 1—536

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5. Same.—Any train which is carrying mail, under the sanction of the postal authorities, is a mail train in the eye of the law. *Ib.* 1—561
6. Same—Intent.—It is not necessary that defendants should be shown to have had knowledge that the mails were on board of a train which they have detained and disabled. On the contrary, they are chargeable with an intent to do whatever is the reasonable and natural consequence of their acts; and as the laws make all railways postal routes of the United States, and it is within everyone's knowledge that a large portion of the passenger trains carry mail, it is to be presumed that any person obstructing one of those trains contemplates, among other intents, the obstruction of the mail. *U. S. v. Debs*, 65 F., 211, followed. *Ib.* 1—562
- See also* COMBINATIONS, ETC., 168, 174, 176, 180.

OFFICERS.

1. Can Not Protect Themselves from Criminal Liability Behind Corporate Organization.—Officers or directors of a corporation can not protect themselves from criminal liability behind the corporate organization where they are the actual, present, and efficient actors in the commission of the offense. *U. S. v. Winslow*, 195 F., 581. 5—176
2. Former Officers of a Corporation Can Not Maintain Action for Damages Under the Sherman Law.—Plaintiffs having no right of property in the offices of a corporation which they had previously held, the election of others thereto, even if an act unlawful, because done in pursuance and furtherance of a combination, conspiracy, or an attempt to monopolize, obnoxious to the Sherman Law, does not bring them within section 7 of that act giving a right of action to any person injured in his business or property by another by reason of anything declared to be unlawful by the law. *Corey v. Boston Ice Co.*, 207 F., 466. 5—342

OVERT ACT.

Not Necessary to Allege. *See* INDICTMENT, 30-34.

PARTIES.

1. Parties to Conspiracy.—When an unlawful end is sought to be effected, and two or more persons, actuated by the common purpose of accomplishing that end, work together in any way in furtherance of the unlawful scheme, every one of said persons becomes a member of the conspiracy, although the part any one was to take therein was a subordinate one, or was to be executed at a remote distance from the other conspirators. *U. S. v. Cassidy*, 67 F., 698. 1—455
2. Same.—Any one who, after a conspiracy is formed, and who knows of its existence joins, therein, becomes as much a party thereto from that time as if he had originally conspired. *U. S. v. Babcock*, Fed. Cas. No. 14487, 3 Dill., 586, cited. *Ib.* 1—455

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3. Same.—Any declaration made by one of the parties, during the pendency of the illegal enterprise, is not only evidence against himself, but against all the other conspirators, who, when the combination is proved, are as much responsible for such declarations, and the acts to which they relate, as if made and committed by themselves. This rule applies to the declaration of a co-conspirator, although he may not himself be under prosecution. *Ib.* 1—456
4. Necessary Parties—Directors of Unincorporated Associations.—All the directors of an unincorporated association are necessary parties to a suit against it arising out of contractual relations, even though a less number are authorized by the association to transact business. *Greer, Mills & Co. v. Stoller*, 77 F., 1. 1—620
5. The State is a necessary party to an action under section 7 of the Sherman Law, against the officials of a State to recover damages for acts done under the authority of a State statute, which gives the State an entire monopoly of the traffic in intoxicating liquors (act of S. C. of Jan. 2, 1895). *Lowenstein v. Evans*, 69 F., 908. 1—598
6. Officers Taking No Part in Combination Not Proper Parties in Injunction Suit.—Officers of corporations which entered into an illegal combination in restraint of interstate commerce, who personally took no part in the formation of such combination, are not proper parties defendant in a suit against the corporations for an injunction under the Sherman Law. *U. S. v. Standard Sanitary Mfg. Co.*, 191 F., 194. 4—426
7. Mortgagees Not Necessary Parties, but May Be Brought in.—To a suit under the Sherman Law to restrain a violation of the act by corporations alleged to constitute a combination in restraint of or to monopolize interstate commerce, mortgagees of such corporations are not necessary parties, but may be brought in if it appears that their interests will be affected by the decree. *U. S. v. du Pont, etc., Co.*, 188 F., 155. 4—380
8. Party Who Has Withdrawn From Combination Not Subject to Suit for Injunction.—A member of a combination in restraint of interstate commerce, in violation of the Sherman Law, who has in good faith withdrawn from such combination, is not subject to a suit for injunction under section 4 of the act; nor, if such member is a corporation, is the fact that a minority part of its stock is owned by members of the combination sufficient to sustain such a suit, in the absence of proof that such ownership is employed to aid the combination. *U. S. v. du Pont, etc., Co.*, 188 F., 129. 4—342
9. Same—When Minority Stockholders Not Subject to Suit.—A minority stockholder in a corporation, who is not an officer

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and takes no part in the management of its business, is not subject to a suit for injunction under the Sherman Law, because the corporation may be a party to a contract or combination to restrain or monopolize interstate commerce.

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4—345

10. **Parties in Equity—Unincorporated Association.**—In a suit in equity to restrain an alleged unlawful combination acting as an unincorporated association it is sufficient that the association, together with a large number of its members, as individuals and officers of the association, are made parties defendant. *U. S. v. Coal Dealers' Assn. of Cal.*, 85 F., 252.

1—749

11. **Indictment—Joinder of Defendants.**—In an indictment under the Sherman Law, the offenses thereunder being made misdemeanors, all who aid in their commission may be personally participate in committing the same, may be joined as defendants, although their acts may have been separate. *U. S. v. MacAndrews & Forbes Co.*, 149 F., 824.

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12. **Action for Damages—Improper Joinder of Members of Separate Combinations.**—National associations of manufacturers of proprietary medicines, wholesale druggists and retail druggists, respectively, entered into a tripartite agreement for the purpose of maintaining prices of proprietary medicines, which constituted a combination and conspiracy in restraint of interstate commerce, in violation of the Sherman Law, and adopted definite plans and methods for carrying it into effect by preventing retailers who cut prices from obtaining such medicines. Subsequently, to forward the same general purpose, the retailers' association proposed further plans and methods far more drastic, under which such price cutters were prevented from obtaining any druggists' supplies. These plans were not adopted by the other associations, but were assented to by some of their members individually upon direct appeal but not by others. *Held*, That the two combinations were separate and distinct, and that a party to the first, who did not become a party to the second, was not bound thereby, and could not be joined as a defendant in an action for damages under the statute with other defendants, who were parties only to the second agreement, nor was the latter admissible in evidence against him. *Jayne v. Loder*, 149 F., 31.

3—80

13. **Ends of Justice Require Necessary Parties to Be Brought in.**—The ends of justice require, within the true meaning of the Sherman Law, that every necessary party within reach of the process of the court, every party who has an interest in the controversy and who ought to be made a party to the suit in order that the court may finally adjudicate the

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whole matter, should be brought in. *U. S. v. Standard Oil Co.*, 152 F., 295. 3—181

14. **Same—All Parties, Though Not Necessary to a Restraining Decree, Should Be Brought in.**—The Sherman Law prohibits conspiracies in restraint of trade, and section 4 confers on the several Federal circuit courts jurisdiction to restrain violations of its provisions; section 5 providing that, whenever it shall appear to the court before which any proceeding under section 4 is pending that the ends of justice require that other parties should be brought in, the court may cause them to be summoned, whether they reside in the district in which the court is held or not. A bill alleged that the Standard Oil Company of New Jersey, a holding corporation, and 7 individual defendants, and about 70 other defendants, called "subsidiary corporations," had formed and were executing a conspiracy to restrain and monopolize commerce in petroleum and its products among the States and Territories and with foreign nations; that, pursuant thereto, the individual defendants had caused the control of all the subsidiary corporations and the ownership of a majority of the stock of many of them to be vested in the Standard Oil Company of New Jersey, while the subsidiary corporations were the producers, refiners, traders, and operators, by means of which the restraint and monopoly was effected and the profits obtained; that the individual defendants owned a majority of the stock of and controlled the holding corporation, and through it the subsidiary corporations; that two of the subsidiary corporations, one a corporation of Missouri within the district, in combination with the other defendants, controlled and monopolized the railroad lubricating oil business of the United States; that the defendants had divided the territory of the United States into districts so that certain defendants only were permitted to sell therein; and that the Missouri corporation was a party to this conspiracy. *Held*, that the ends of justice required that all of the defendants, regardless of their residence, be made parties to such proceeding, though they were not necessary parties to a decree merely restraining the Missouri corporation from further continuing its wrongful acts. *Ib.* 3—181

15. **Same—Practice under Section 5.**—The approved practice under the Sherman Law is to make all the conspirators, both resident and non-resident, parties defendant to the bill, to set forth therein the existence and history of the conspiracy and the connection of each defendant therewith, and immediately upon its filing to present a petition to the court in which the places where the non-resident defendants can be served with process are disclosed, and to pray therein

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- that they be summoned. An order granting such a petition before service of process upon the resident conspirator and without notice to the non-resident conspirators is neither premature nor irregular. *Ib.* 3—181
16. **Parties to Conspiracy.**—Where several brewing companies forming a combination or trust are charged by complainants in a bill in equity, retail dealers in malt liquors, with a conspiracy to compel another company to join the association, and such combination is held to be in restraint of trade, individuals who are officers of a labor union, and who are charged with attempting to procure its members to leave the employment of such company unless it will agree to enter such association, are equally within the scope of the remedy by injunction sought to prevent injury to the complainants through the execution of the objects of the conspiracy entered into by their co-defendants. *Leonard v. Abner-Drury Brewing Co.*, 25 App. (D. C.) Cases, 161. 3—18
17. **City a Person.**—By express provision of the Sherman Law, a city is a person within the meaning of section 7 of that act, and can maintain an action against a party to a combination unlawful under the act by reason of which it has been forced to pay a price for an article above what it is reasonably worth. *Chattanooga Foundry & Pipe Works v. Atlanta*, 203 U. S., 396. 3—119
18. **Must Be Two Parties to a Conspiracy.**—Where an indictment against a number of defendants charges them with a conspiracy among themselves and with others in restraint of interstate trade and commerce, in violation of section 1 of the Sherman Law, or to monopolize any part of such trade and commerce, in violation of section 2, to warrant a conviction, it must be found that at least two of the defendants were parties to such a conspiracy. *U. S. v. American Naval-Stores Co.*, 172 F., 460. 3—687
19. **Injunction—Government Only Can Bring Suit for.**—The Sherman Law does not authorize the bringing of injunction suits or suits in equity by any parties except the Government. *Blundell v. Hagan*, 54 F., 40. 1—106
Case affirmed, 56 F., 696 (1—182).
20. **Injunctive Relief—United States Attorney.**—The only party entitled to maintain a bill in equity for injunctive relief for violating the provisions of the Sherman Law is the United States attorney, at the instance of the Attorney General. *Metcalf v. Amer. School Furniture Co.*, 122 F., 115. 2—235
21. **Consent of parties can never confer jurisdiction upon a Federal court.** *Minnesota v. Northern Securities Co.*, 194 U. S., 48. 2—533
22. **Monopolies—Suit by Private Individual.**—The Sherman Law confers no right upon a private individual to sue in equity for

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the restraint of the acts forbidden by such statute, an action at law for damages being the only remedy provided for private persons, and the right to bring suits in equity being vested in the district attorneys of the United States. *Pidcock v. Harrington*, 64 F., 821. 1—377

See also ACTIONS AND DEFENSES, 1—35.

23. All Active in a Misdemeanor Are Principals.—All parties who are active in promoting a misdemeanor, whether agents or not, are indictable as principals. *U. S. v. Winslow*, 195 F., 581. 5—176

24. A Party to an Unlawful Agreement, None the Less a Party, Although Not Subject to All Restrictions.—A party to an agreement in restraint of trade is none the less a party to the illegal combination created thereby, because it is not subject to all the restrictions imposed upon all the other parties thereto. *Standard Sanitary Mfg. Co., v. U. S.*, 51. 4—650

25. Same—Culpability of Party to Unlawful Agreement, Not Removed Because of Less Restriction to Meet Local Conditions.—The culpability of a party to a combination of manufacturers and jobbers which accomplishes a restraint of trade condemned by the Sherman Law is not removed because it was restricted in less degree than the other jobbers, enjoying a certain freedom of competition to meet local conditions. 57 L. Ed., 107. 4—650

26. One Who Joins Conspiracy After Formed Becomes as Much a Co-conspirator as if Party to Its Formation.—One who learns of a conspiracy or unlawful combination after it is formed, and then joins it or knowingly aids in the execution of the scheme and shares in its profits, becomes from that time as much a co-conspirator as if he were one of those who originally designed it. *U. S. v. L. S. & M. S. Ry. Co. et al.*, 203 F., 307. 5—259

27. All Who Are Privy to the General Plan in a Combination Are Liable for Damages Caused Thereby.—In an action for damages caused by such combination, all of the parties privy to the general plan were properly joined, though the execution of different parts of the plan was confined to individuals. *Marienell, Lim. v. United Booking Offices*, 227 F., 171. 5—953

28. Managing Affairs of Combination, Though Not Principals, Liable for Damages.—Those who actively participate in managing the affairs of an unlawful combination in this country are liable under section 7, although they are not the principals. *Thomsen v. Cayser*, 243 U. S., 86. 6—729

29. Joining at Different Times in Unlawful Attempt to Monopolize, Liable for Acts in Which He Participated.—Where a company was engaged in a single continuing attempt to secure a monopoly of a particular business, in which attempt different

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parties joined successively, and by which a competitor was injured, all those joining in the unlawful attempt at different times become liable for whatever injury resulted from the tortious act in which he participated. *American Steel Co. v. American Steel & Wire Co.*, 244 F., 303. 6—1022

30. Same—Need Not Expect to Profit by Acts to Render Him Liable.—A party participating in a company's attempt to monopolize a particular business need not expect to profit by his illegal conduct, in order to render him liable. *Ib.* 6—1022

31. To a Suit by the United States to Have Leases of Shoe Machinery Adjudged Illegal under the Clayton Law, the Lessees Are Not necessary parties.—To a suit by the United States to have leases of shoe machinery exacted by defendants from shoe manufacturers adjudged illegal, as in violation of the Clayton Law, because of provisions therein intended to prevent competition and to secure a monopoly by virtually compelling the lessees to purchase or lease other machines from defendants and preventing them from purchasing or using machines made by competitors of defendants, and to enjoin the further making or enforcement of leases containing such provisions, the lessees are not necessary parties; no relief being asked against them. *U. S. v. United Shoe Mach. Co.*, 234 F., 138. 5—810

32. Same—Failure to Join One Who Is a Proper, but Not Necessary Party, Does Not Deprive Court of Jurisdiction.—The failure to join one who is a proper, but neither a necessary nor an indispensable, party, does not deprive a Federal court of equity of jurisdiction. *Ib.* 5—812

33. Same—In Suit by United States for Violation of the Clayton Law, by a Corporation Owning the Stock of Other Corporations, the Owned Corporations Were Properly Joined as Defendants.—All of the stock of one corporation was owned by a second, and 98½ per cent of the stock of the second was owned by a third, and all three had for the most part the same officers and directors. *Held* that, in a suit by the United States for violation of the Clayton Law, by the first corporation, the other two corporations were properly joined as defendants. *Ib.* 5—816

34. To Agreement to Fix or Maintain Prices, Liable for Damages.—No man has a right to be a party to an agreement or combination to fix or maintain prices, and one who does something to further such an illegal object is liable in damages to a party thereby injured. *Frey & Son v. Welch Grape Juice Co.* (not reported). 6—869

Frey & Son v. Cudahy Packing Co. (not reported). 6—880

See also ACTIONS AND DEFENSES, 1—35.

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PATENTS.

1. A corporation organized for the purpose of securing assignments of all patents relating to "spring-tooth harrows," to grant licenses to the assignors to use the patents upon payment of a royalty, to fix and regulate the price at which such harrows shall be sold, and to take charge of all litigation, and prosecute all infringements of such patents, is an illegal combination whose purposes are contrary to public policy, and which a court of equity should not aid by entertaining infringement suits brought in pursuance thereof. *National Harrow Co. v. Quick*, 67 F., 130. 1—443
2. Corporation Organized to Receive Assignments of Patents.—A combination among manufacturers of spring-tooth harrows, by which each manufacturer assigns to a corporation organized for the purpose the patents under which he is operating and takes back an exclusive license to make and sell the same style of harrows previously made by him, and no other, all the parties being bound to sell at uniform prices, held to be an unlawful combination for the enhancement of prices, and in restraint of trade. *National Harrow Co. v. Hench*, 76 F., 667. 1—610
 Affirmed, 83 F., 36 (1—742).
 See also *Indiana Mfg. Co. v. J. I. Case Threshing Mach. Co.*, 148 F., 21.
3. Same.—Though the fact that several patentees are exposed to litigation justifies them in composing their differences, they can not make the occasion an excuse or cloak for the creation of monopolies to the public disadvantage. *National Harrow Co. v. Hench*, 83 F., 36. 1—743
4. Same—Infringement Suit.—A combination among manufacturers of spring-tooth harrows whereby a corporation organized for the purpose becomes the assignee of all patents owned by the various manufacturers and executes licenses to them, so as to control the entire business and enhance prices, is void both as to the assignments and licenses, so that the corporation can not maintain a suit for infringement, against one of its assignors, who violates the agreement. *National Harrow Co. v. Hench*, 84 F., 226. 1—746
5. Merging of Ownership of Patents in One Person May Constitute a Conspiracy.—Conceding that a number of patents relating to the same art may be united by purchase in the same ownership and that the grant of combination licenses thereunder on conditions specified may be within the lawful monopoly given by the patent law, yet to be immune from the operation of the Sherman Law, the contract must be referable solely to the inventions under the patents and intended to secure a monopoly in the beneficial use of specific inventions only; and where it extends beyond such purpose and is in-

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tended to create a monopoly in the manufacture of the article to which the patents relate by securing and holding for the benefit of the parties all patents relating thereto under which such manufacture may be carried on, and not for the protection of patent rights, it may constitute a conspiracy and combination in restraint of trade in violation of the law. *Indiana Mfg. Co. v. Case Threshing Machine Co.*, 148 F., 21. 3—25

6. Same.—Complainant acquired by purchase the ownership of or exclusive right to use 21 United States and 2 Canadian patents, all relating to pneumatic straw stackers, and confederated all of the manufacturers of threshing machines in the country in a plan of uniform licenses under the combined patents with a uniform price fixed for the product and payment of a royalty to complainant for each machine until the end of the full term of any of the patents or of any which might thereafter be acquired by complainant. It thereafter acquired numerous other patents, until it held over 100 in all. The devices of such patents were not all capable of conjoint use in a single machine. None of them covered the pioneer invention of a wind stacker. A number covered non-interfering devices performing the same functions and capable of independent use by different manufacturers, and many were of no practical value and not used by any of the licensees. *Held*, that the purpose and effect of such system of contracts was to create a monopoly in wind-stacker products without reference either to any specific invention or the validity of any patent; that the agreement fixing the selling price of any form of the product was not attributable to any patent in the list nor to specific invention in either of the patent devices, and was not within the protection of the patent law, and that the combination created by such contracts was in restraint of trade and illegal as in violation of the Sherman Law, and the contracts not enforceable in equity. *Id.* 3—29

7. Agreement Not to Use, in Restraint of Trade.—While it is the ordinary privilege of the owner of a patent to use or not, without question of motive, the grant of a patent confers on the patentee no right to use his invention, or to agree not to do so, in restraint of trade in that article, except in connection with an assignment of the rights conferred by the letters patent. *Blount Mfg. Co. v. Yale & Towne Mfg. Co.*, 166 F., 558. 3—580

8. Contracts by which a number of patents covering similar inventions are conveyed, by the several owners to one of the parties which grants licenses under all to the others are not void as against public policy or as in violation of the Sherman Law, because of provisions intended to protect and keep up

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the patent monopoly by requiring the licensor to prosecute all infringers, limiting the licenses to be granted to such licensees as shall be agreed on and imposing conditions on each license as to the use and ownership of the patented machines, and prohibiting him from using any others. *U. S. Consolidated Seeded Raisin Co. v. Griffin & Skelley Co.*, 126 F., 364. 2—288

9. Same.—Rights acquired under the patent laws of the United States can not be affected by a State statute. *Ib.* 2—296
10. A State statute can not interfere with the monopoly granted to a patentee and his assignees under the Federal laws. *Rubber Tire Wheel Co. v. Milwaukee Rubber Works Co.*, 154 F., 361. 3—276
11. The object of the patent laws is monopoly, and the rule is, with few exceptions, that any conditions which are not in their very nature illegal with regard to this kind of property, imposed by the patentee, and agreed to by the licensee for the right to manufacture or use or sell the article, will be upheld by the courts; and the fact that the conditions in the contracts keep up the monopoly does not render them illegal. The prohibition was a reasonable prohibition for the defendant, who would thus be excluded from making such barrows as were made by others who were engaged in manufacturing and selling other machines under other patents; but it would be unreasonable to so construe the provision as to prevent the defendant from using any letters patent legally obtained by it and not infringing patents owned by others. *Bement v. National Harrow Co.*, 186 U. S., 70. 2—169
12. Conditions imposed by the patentee in a license of the right to manufacture or sell the patented article which keep up the monopoly or fix prices do not violate the Sherman Law. *Ib.* 2—191
13. Reasonable and legal conditions imposed by the patentee in a license of the right to manufacture and sell the patented article restricting the terms upon which the article manufactured under such license may be used and the price to be demanded therefor do not constitute such a restraint on commerce as is forbidden by the Sherman Law. *Ib.* 2—191
14. The agreement of the licensee of a patent for improvements relating to float spring-tooth harrows not to manufacture or sell any other such harrows than those which it had made under its patents before assigning them to the licensor, or which it was licensed to manufacture and sell under the terms of the license, except such other style and construction as it may be licensed to manufacture and sell by such licensor, is not void as an unlawful restraint on trade or commerce forbidden by the Sherman Law, since the plain

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- purpose of this provision is to prevent the licensee from infringing on the rights of others under other patents, and not to stifle competition or prevent the licensee from attempting to make any improvement in harrows. *Ib.* 2—191
15. An agreement by the licensor of a patent for improvements relating to harrows not to license any other person than the licensee to manufacture or sell any harrow of the peculiar style and construction then used or sold by such licensee does not violate the Sherman Law. *Ib.* 2—191
16. Licenses—Right to Attach Conditions.—It is within the rights of the owner of a patent to grant licenses conditioned that the licensees shall sell the patented article only at prices fixed by the agreement and also restricting the production of a licensee, and such agreements, if made in good faith and for the purpose of protecting the patent monopoly, are not illegal as in restraint of trade and commerce, and such good faith is not impeached by the fact that the patent has been held invalid by the Federal courts in some circuits, where it has been sustained in others. *Rubber Tire Wheel Co. v. Milwaukee Rubber Works Co.*, 142 F., 531. 2—855
17. Same.—Such patent monopoly does not include, however, the right of the patentee to enter into a combination in the form of license contracts with manufacturers throughout the United States, not only to raise and maintain the prices of such articles, being articles of interstate commerce, above the normal market price, but to crush out competition by outside manufacturers. *Ib.* 2—866
18. Policy of Patent Laws.—The public policy declared by the patent laws is that it is for the benefit of the public to stimulate invention and that inventors shall publish their inventions, and to that end, and in consideration of such publication, to become effective at the end of 17 years, they insure to a patentee in the meantime absolute protection in the right to exclude everyone else from making, using, or vending the thing patented without his consent. *Rubber Tire Wheel Co. v. Milwaukee Rubber Works Co.*, 154 F., 361. 3—276
19. Same—Licenses—Legality of Conditions.—Use of a patented invention can not be had except on the inventor's terms, and the requirement that a licensee join other licensees in a combination or pool to control the prices and output of an innocuous patented article is not in violation of the Sherman Law. Patented articles, unless and until they are released by the owner of the patent from the dominion of his monopoly, are not articles of trade or commerce among the several States within the meaning of such act, because they are not articles in which the people are entitled to freedom of trade. *Ib.* 3—277

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- 20. Modification of Licenses.**—Since the public, by licenses to manufacture patented automobile tires, only secured the right to purchase the tires after they have been manufactured and offered for sale, and has no right to have the competition between the different licensees continued, a modification of the licenses between the owner of the patent and the various licensees regulating the manufacture and sale of such tires was not objectionable as a restraint of trade, in violation of the Sherman Law, *Goshen Rubber Works v. Single Tube A. & B. Tire Co.*, 166 F., 433. 3—574
- 21. Rights Enjoyed by Patentee.**—The rights enjoyed by a patentee are derived from statutory grant under authority conferred by the Constitution and are the reward received in exchange for advantages derived by the public after the period of protection has expired; and the rights of one not disclosing his secret process so as to secure a patent are outside of the policy of the patent laws and must be determined by the legal principles applicable to the ownership of such process. *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U. S., 401. 4—25
- 22. A manufacturer of unpatented proprietary medicines stands on the same footing as to right to control the sale of his product as the manufacturers of other articles, and the fact that the article may have curative properties does not justify restrictions which are unlawful as to articles designed for other purposes.** *Ib.* 4—27
- 23. Same.**—The protection of an unpatented process of manufacture does not necessarily apply to the sale of articles manufactured under the process. *Ib.* 4—26
- 24. Same.**—A manufacturer of unpatented articles can not, by rule or notice, in absence of statutory right fix prices for future sales, even though the restriction be known to purchasers. Whatever rights the manufacturer may have in that respect must be by agreements that are lawful. *Ib.* 4—28
- 25. Infringement Suit—Scope and Effect.**—A suit for infringement of a patent is not a proceeding in rem, and a decree of a circuit court of appeals in such a suit adjudging a patent void is binding only on the parties, and does not affect the validity of a license contract subsequently made between the owner of the patent and others, which is enforceable as fully and to the same extent in the circuit in which such decree was rendered as elsewhere in the United States. *Rubber Tire Wheel Co. v. Milwaukee Rubber Works Co.*, 154 F., 363. 3—279
- 26. Suit for Infringement—Defenses.**—The fact that the owner of a patent is a corporation alleged to have been formed in violation of the Sherman Law, and that the patent is alleged

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to have been assigned to it in furtherance of the illegal purpose to create a monopoly and control the price of an article of commerce, is not available to an infringer of such patent to defeat a suit for the infringement. *National Folding-Box & Paper Co. v. Robertson*, 99 F., 985. 2—4

27. In an action by a corporation for the infringement of elevator patents, a private defendant was not entitled to urge as a defense that plaintiff was a corporation organized merely for the purpose of holding the legal title to various elevator patents alleged to have been infringed, for the purpose of controlling sales and enhancing prices of elevators and apparatus, without itself engaging in the manufacture and sale of such appliances, in violation of the Sherman Law, since until the United States has acted and sought to prosecute the plaintiff for violation of such act an infringer of the plaintiff's patent will not be permitted to raise such issue as a defense thereto. *Otis Elevator Co. v. Geiger*, 107 F., 131. 2—66

28. Infringement of Patent Belonging to Member of a Corporation in Violation of the Sherman Law.—That a complainant is a member of a combination in violation of the Sherman Law does not give third persons the right to infringe a patent of which complainant is owner nor preclude complainant from maintaining a suit in equity to enjoin such infringement. *General Electric Co. v. Wise*, 119 F., 922. 2—205

29. Suit for Infringement—Defenses.—That a complainant is itself, or is a member of, a combination in violation of the Sherman Law, is not a defense available in an action for the infringement of a patent, nor does it show a defect in complainant's title. *Motion Picture Patents Co. v. Laemmle*, 178 F., 105. 3—765

30. Suit for Infringement.—That the owner of a patent is a party to an illegal combination in restraint of trade does not deprive him of the right to sue for infringement of his patent. *Virtue v. Creamery Package Mfg. Co.*, 179 F., 119. 3—801

31. Suit for Infringement—Allegation of Unlawful Conspiracy.—It is no defense to a suit for infringement of a patent that the complainant and third persons have entered into an illegal combination or conspiracy in restraint of trade; and such defense is not aided by an allegation in the answer that the suit is not brought in good faith to prevent infringement, but for the purpose of making such conspiracy effective. *Motion Picture Patents Co. v. Ullman*, 186 F., 175. 4—47

32. License Contract—Validity of, Must Be Established Before Equity Will Enforce or Grant Relief.—Where a bill alleges infringement of patents by the violation of the conditions of a license contract thereunder, and seeks in effect the specific enforcement of the contract, its legality is involved directly

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and not collaterally, and must be established before equity will grant relief. *Indiana Mfg. Co. v. Case Threshing Mach. Co.*, 148 F., 21. 3—21

33. **Effect of Restriction on Use.**—The extent of a license to use, which is carried by a sale of a patented article depends upon whether any restrictions were placed upon the sale, and if so what they were, and how they were brought home to the vendee; and where, as in this case, a restriction is plainly placed upon the article itself, a sale carries with it only the right to use within the limits specified, and any other use is an infringing one. *Henry v. A. B. Dick Co.*, 224 U. S., 25. 6—754
34. **When Use of Article, with License Restriction, Contributory Infringement.**—Complainant sold his patented machine embodying the invention claimed and described in the patent, and attached to the machine a license restriction that it only be used in connection with certain unpatented articles made by the vendor of the machine; with the knowledge of such license agreement and with the expectation that it would be used in connection with the said machine, defendant sold to the vendee of the machine an unpatented article of the class described in the license restriction. *Held*, that the act of defendant constituted contributory infringement of complainant's patent. *Ib.* 6—763
35. **Same—When Suit for Infringement Presents Case Under Patent Law.**—A suit for infringement which turns upon the scope of the patent and privileges of the patentee thereunder presents a case arising under the patent law. *Ib.* 6—749
36. **Same—To What Monopoly of Extends.**—The monopoly of a patent extends to the right of making, selling and using, and each is a separate and substantial right. *Ib.* 6—756
37. **Same—What Constitutes Contributory Infringement.**—Contributory infringing is the intentional aiding of one person by another in the unlawful making, selling or using of a patented invention. *Ib.* 6—761
38. **Price Restrictions Not for Purpose of Protecting Patent, but of Evading Sherman Law, Void.**—If a license restriction imposed by the owner of a patent is not for the purpose of protecting the patent or for securing its benefits, but for the purpose of evading the Sherman Law, it is void. *Ingersoll & Bro. v. McColl*, 204 F., 149. 5—161
39. **Same—Restrictions on Sale of Watches Held Not for Protection of Patent, and Purchasers Not Bound Thereby.**—Complainants make and sell, under different trade-names, watches containing parts which are patented. Each watch is placed in a box, and on some of the boxes is printed a notice or so-called license restriction, by which complainants attempt to control the price at which the watch may be sold by jobbers

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and retailers under penalty of being charged with infringement of the patents. Others of the watches, sold under different trade-names, but having the same mechanism and containing the same patented parts, are sold without any restriction. *Held*, that such restrictions were clearly not intended to protect the use of the patents or the monopoly which the law confers upon them, but for the protection of certain of the trade-marks, and that a purchaser who had no contract relations with complainants was not bound thereby.

Ib.

5—167

40. **Manufacturer of Patented Article Can Not Enforce Price Restriction Agreement, After Article Has Reached the Retail Dealer.**—Where a patented article has passed into the channels of trade and reached a retail dealer, the manufacturing patentee is not entitled to enforce a price restriction agreement for the purpose of preventing competition as against such retailer; such restriction being void both at common law and under the Sherman Law. *Kellogg Toasted Corn Flake Co. v. Buck*, 208 F., 383.

5—848

41. **Owner of Patented Article Can Not Legally Fix the Price at Which it May be Resold.**—Where the owner of a patent sells a machine made by him thereunder, and receives therefor the full price asked, and all that he expects to receive, he has fully exercised the exclusive right to sell given him by the patent laws, so far as relates to the particular machine sold, and can not legally fix the price at which it may be resold by the purchaser. *Ford Motor Co. v. Union Motor Sales Co.*, 225 F., 375.

6—185

42. **Failure by Agent or Vendee to Observe Price Restriction, as Condition of Exclusive Right to Sell, an Infringement of.**—Whether a violation of a contract by an agent or vendee of a patentee to observe price restriction, imposed as a condition on which exclusive right of sale by patentee is being exercised, may be dealt with as for infringement or breach of contract, enforceable in equity, is immaterial as between the parties, except only as it may affect the jurisdiction of the court to be invoked; but, where the contract is to be taken as the measure of the agent or vendee's right, a failure to observe its stipulations is an infringement. *American Graphophone Co. v. Boston Store*, 225 F., 789.

6—844

43. **Does Not Give Owner Right, After Sale, to Control Resale of Patented Article.**—The monopoly to sell, granted by the patent law, does not give the owner any right, after he has once sold a patented article, to control its further disposition, because it is a patented article, any more than if it was not a patented article. *Lowe Motor Supplies Co. v. Weed Chain Tire Grip Co.* (not reported).

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- 44. Gives Patentee No Right to Dictate Resale Price of Patented Article.**—A patent gives the patentee no right to dictate price at which patented articles absolutely sold by him shall be resold by the purchaser, and so no right to restrain sale at less than the price attempted to be fixed by the patentee by a third person buying from the purchaser from the patentee at less than such price, with knowledge of the contract between the patentee and such purchaser attempting to fix the resale price. *Ford Motor Co. v. Union Motor Sales Co.*, 244 F., 161. 6—1016
- 45. No Defense to Suit for Infringement, that Patent Was Acquired in Aid of an Unlawful Combination.**—An assignee of a patent holding under an assignment made in aid of a combination violative of the Sherman Law may sue in equity an infringer of the patent who can not justify his wrongful acts by attacking the assignee as an unlawful combination, since a decree establishing title in the assignee and an infringement by the infringer need not touch the question of illegal combination. *U. S. Fire Esc. etc., Co. v. Halsted Co.*, 195 F. 297. 4—464
- 46. Owner of, Has No Right to Resort to Unfair Competition to Force Competitors Out of Business.**—Both the patent laws and the Sherman Law were enacted under constitutional authority, and they must be construed together, giving full force and effect to each so far as that may be done. That a patentee, putting his invention to use, has become entitled to a monopoly of its manufacture and sale, and that his competitors in interstate commerce therein are infringers of his patent, does not give him a right to resort to methods of unfair competition to force the competitors out of business; and such action, pursuant to a conspiracy or combination, is in restraint of interstate commerce, and in violation of the Sherman Law. *U. S. v. Patterson et al.*, 205 F., 297. 5—53
- 47. Patentee Has Common-Law Right to Make, Use, and Sell Article Patented.**—A patentee has the common-law right to make, use, or sell the article patented, and the statutory right to exclude or prevent others from making, using, or selling it, and to have others refrain therefrom. *Patterson v. U. S.*, 222 F., 645. 5—130
- 48. The Patent Laws Were Not Repealed by the Sherman Law.**—The patent laws, which preserve to a patentee the exclusive right for a limited time of making and vending the patented article, are not repealed by the Sherman Law, and the patentee by virtue of his patent may impose reasonable conditions of bailment and sale. *U. S. v. Motion Picture Patents Co.*, 225 F., 803. 6—210
- 49. Same—While Owner of May Acquire Other Patents, They Can Not Be Acquired for Restraining Trade.**—The owner of a

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patented device may acquire any other patents for improvements, or several owners may pool their ownerships for their joint protection; but such patents can not be acquired or combined for the purpose of unlawful restraining of trade.
Ib. 6—215

50. Sale of Patented Machine Carries Implied Right of Use.—The sale of a patented motion picture projecting machine carries with it, in the absence of restriction, an implied license of use. *Motion Pic. Pat. Co. v. Universal Film Co.*, 235 F., 402.
 6—645

51. Same—Where Terms of Royalty Not Brought to Notice of Purchaser, from Manufacturer of Machine, Patentee Not Entitled to Royalty, etc.—The fact that there was attached to a patented motion picture projecting machine a plate reciting that the sale and purchase of the machine gave only the right to use it upon other terms to be fixed does not, where it did not appear that the terms relating to royalty were ever fixed or brought to the notice of a purchaser from a licensee to manufacture, entitle the holder of the patent rights to royalties. *Ib.* 6—645

52. Same—Knowledge of General Terms upon Which Use Was Granted, Will Not Establish Purchaser's Liability for Royalties.—In such case, evidence that the purchaser had knowledge of the terms upon which the holder of the patent rights was accustomed to grant permission to use a machine manufactured by its licensees will not establish the purchaser's liability for royalties; there being nothing in the notice to prevent the holder of the patent rights from varying the royalties. *Ib.* 6—646

53. Rights Conferred by, Do Not Give License Against Positive Prohibitions.—While rights conferred by patents are definite and extensive, they do not give a universal license against positive prohibitions any more than any other rights do. *Standard Sanitary Mfg. Co. v. U. S.*, 226 U. S., 49. 4—649

54. Owner of Has Exclusive Right of Making, Using and Selling.—The owner of a patent has exclusive rights of making, using and selling, which he may keep or transfer in whole or in part. *Virtue v. Creamery Package Mfg. Co.*, 227 U. S., 32.
 4—830

55. Same—Can Not Be Made Cover for Violation of Law.—Patents and patent rights can not be made a cover for violation of law; but they are not so used when only the rights conferred by law are exercised. *Ib.* 4—830

56. Same—Can Be Protected by Party to Illegal Combination.—Patent rights can be protected by a party to an illegal combination. *Ib.* 4—830

57. Same—Wrongful Assertion of Patent Right May Constitute Malignant Prosecution.—Assertion of patent rights may be so

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conducted as to constitute malicious prosecution; but failure of plaintiff to maintain the action does not necessarily convict of malice. *Ib.* 4—835

58. Same—Mere Coincidence in Time of Bringing Infringement Suits Does Not Necessarily Indicate Combination.—Mere coincidence in time in the bringing by separate parties of suits for infringements on patents against the same defendant does not necessarily indicate a combination on the part of those parties to injure the defendant within the meaning of § 7 of the Sherman Law. *Ib.* 4—834

59. Exclusion of Competitors Essence of the Right.—Exclusion of competitors from making a patented article is of the very essence of the right conferred by the patent. *U. S. v. Winslow*, 227 U. S., 217. 5—212

PATENTEE.

1. May Waive Tort in Infringement and Sue on Broken Contract.—

A patentee who has leased his patent to a licensee under restrictions may waive the tort involved in infringement and sue upon the broken contract; but in that event the case is not one arising under the patent laws and, in the absence of diversity of citizenship, a Federal court has no jurisdiction thereof. *Henry v. A. B. Dick Co.*, 224 U. S., 13. 6—743

2. Same—Whether He May Impose Restrictions on Use, Is Question under Patent Law.—Whether a patentee may lawfully impose restrictions on the use of a patent and whether the violation thereof constitutes infringement are questions under the patent law. *Ib.* 6—744

3. Same—May Elect to Sue on Broken Contract, or for Infringement.—A patentee may elect to sue his licensee upon the broken contract, or for forfeiture for breach, or for infringement. *Ib.* 6—744

4. May, by Conditional Sale, Restrict Use of Patent.—While an absolute and unconditional sale operates to pass the patented article outside of the boundaries of the patent, a patentee may by a conditional sale so restrict the use of his vendee within specific boundaries of time, place or method as to make prohibited uses outside of those boundaries constitute infringement and not mere breach of collateral contract. *Ib.* 6—749

5. Same—May Exclude Others, Although He Does Not Use Invention.—A patentee may exclude others from the use of his invention although he does not use it himself. *The Paper Bag Case*, 210 U. S., 405. *Ib.* 6—757

6. Same—Larger Right of Exclusive Use, Embraces Right to Permit Use on Conditions.—The larger right of exclusive use of the patentee embraces the lesser one of only permitting the licensee to use upon prescribed conditions. *Ib.* 6—762

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7. **May Not, by Notice, Limit Resale Price of Patented Article.**—A patentee may not by notice limit the price at which future retail sales of the patented article may be made, such article being in the hands of a retailer by purchase from a jobber who has paid to the agent of the patentee the full price asked for the article sold. *Henry v. Dick Co.*, 224 U. S., 1, distinguished. *Bauer & Cie v. O'Donnell*, 229 U. S., 16. 6—809
8. **Same—Parting with Title, Places Article Beyond Monopoly of Patent Law.**—While the patent law creates to a certain extent a monopoly by the inventor in the patented article, a patentee who has parted with the article patented by passing title to a purchaser has placed the article beyond the limits of the monopoly secured by the act. *Adams v. Burke*, 17 Wall., 453. *Ib.* 6—810
9. **Same—May Transfer Qualified Title to Patented Article.**—The right given by the patent law to the inventor to use his invention should be protected by all means properly within the scope of the statute, and the patentee may transfer a patented article with a qualified title as to its use. *Henry v. Dick*, 224 U. S., 1. *Ib.* 6—806
10. **Can Not Control, After Sale and Payment, Resale Price of Patented Article.**—The monopoly of use granted by the patent law can not be made a means of controlling the prices of the patented articles after they have been, in reality even though not in form, sold and paid for. *Straus v. Victor Talking Machine Co.*, 243 U. S., 500. 6—819
11. **May Not, by Notice Attached to Patented Article, Restrict Its Use, in Operation, to Certain Materials.**—Under the patent law the grant by patent of the exclusive right to use, like the grant of the exclusive right to vend, is limited to the invention described in the claims of the patent, and that law does not empower the patent owner by notices attached to the things patented to extend the scope of the patent monopoly by restricting their use to materials necessary for their operation but forming no part of the patented invention, or to send such articles forth into the channels of trade subject to conditions as to use or royalty, to be imposed thereafter, in the vendor's discretion. *The Button-Fastener Case*, 77 Fed. Rep., 288, and *Henry v. Dick Company*, 224 U. S., 1, overruled. *Motion Picture Pat. Co. v. Universal Film Mfg. Co.*, 243 U. S., 511. 6—829
12. **May, by Proper Agreement, Reserve Portion of Right in Patented Article; But Not After It Has Passed Out from Under His Monopoly.**—A patentee may, while exercising any of his three coordinate monopoly rights of making, selling, and using, reserve by proper agreement such portion thereof as he may see fit; but after he has once allowed the patented article to pass out of the monopoly, without committing, by

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proper agreement, the one to whom the article comes to the observance of an obligation on his part, he can not recall it, or claim that by notice he has burdened the article with such reservation. *American Graphophone Co. v. Boston Store*, 225 F., 786. 6—840

PATENT MEDICINES. See COMBINATIONS, ETC., 87, 309, 310-314.

PAYMENT. See ACTIONS AND DEFENSES, 135, 136.

PENALTIES.

Not Authorized by Law Can Not Be Inflicted.—Penalties which are not authorized by the law can not be inflicted by judicial authority. *Standard Oil Co. v. U. S.*, 221 U. S., 77. 4—145

PERSONAL RIGHTS.

Subordinate to the Public Good.—Individual rights are and must be subordinated to the public good. *Stephens v. Ohio State Tel. Co.*, 240 Fed., 775. 6—943

PETROLEUM. See COMBINATIONS, 61, 177.

PICKETING.

1. Where Strikers Establish Picket, the Picket Is the Agent of the Union.—Where a picket around an employer's place of business is established by union strikers, the picket is the agent of the union, and efforts to dissuade others from accepting employment offered by the former employer should go no further than peaceable persuasions and inducements. *Alaska S. S. Co. v. Inter. Longshoremen's Ass'n*, 236 F., 969. 6—680

2. Same—While Members of Union May Picket Employer's Place of Business, He Is Entitled to Free Access to His Business for Himself and Employees.—While laborers, members of a union, may strike, and may picket their employer's business, the employer is entitled to free access to his place of business for himself and other employees, and such rights can not be interfered with. *Ib.* 6—681

3. Striking Employees Have Right to Picket; and to Persuade, But Not Coerce, Others Seeking Employment, Not To Do So.—Striking employees have a lawful right to place pickets in the streets leading to their employer's plant, to ascertain who are continuing or seeking employment there, and to persuade, but not to coerce, them not to do so, and the maintenance of such pickets, and attempts to persuade employees to cease working can not be enjoined. *Tri-City Trades Council v. American Steel Foundries*, 238 F., 730. 6—916

4. Interfering with Operation of Telephone Company Restrained.—An injunction issued in a suit by the subscribers of a telephone company whose employees were on a strike, to compel the company to perform its contracts, which restrained all persons from doing any act which may interfere in any respect with the performance of those duties, is, in view of the fact that the interests of the public are paramount to the interests of the strikers or the employers, as definite as it

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could be made and be effective, and complies with the Clayton Law, section 19, providing that, in any case between employers and employees, an injunction should specify in reasonable detail the things enjoined, conceding that that section applied to such a suit. *Stephens v. Ohio State Tel. Co.*, 240 Fed., 775. 6—943

PLEADING AND PRACTICE.

I. PLEADING.

1. Allegations.—A complaint alleging that members of an association have conspired and combined to raise the prices of tiles, mantels, and grates, to control the output, and to regulate the prices thereof, with the intent to monopolize trade and commerce between the other States and California in regard thereto, as well as to arbitrarily fix their prices independently of their natural market value, brings the case within the Sherman Law. *Lowry v. Tile, Mantel & Grate Assn. of Cal.*, 98 F., 817. 1—995
2. Averments.—A bill charges a violation of the Sherman Law, as against the objections of want of equity, multifariousness, and failure to set forth sufficient definite or specific facts, where it avers the existence of a combination of a dominant proportion of the dealers in fresh meat throughout the United States not to bid against each other in the live-stock markets of the different States, to bid up prices for a few days, in order to induce shipments to the stock yards, to fix selling prices, and to that end to restrict shipments of meat when necessary, to establish a uniform rule of credit to dealers, and to keep a black list, to make uniform and improper charges for cartage, and to secure less than lawful freight rates, to the exclusion of competitors. *Swift & Co. v. United States*, 196 U. S., 375. 2—643
3. Same.—Trade in fresh meat is sufficiently shown to be commerce among the States, protected from restraint by the Sherman Law, by allegations in a bill charging meat dealers with violations of that act, which, even if they import a technical passage of title at the slaughtering places in cases of sales, also import that the sales are to persons in other States, and that the shipments to other States are pursuant to such sales, and by allegations charging sales of such meat by their agents in other States, which indicate that some, at least, of the sales were in the original packages. *Ib.* 2—666
4. Same.—A general allegation of intent may color and apply to all the specific charges of a bill which seeks relief against alleged violations of the Sherman Law. *Ib.* 2—661
5. Same.—Vagueness can not be asserted of a charge in a bill seeking relief against an attempt to monopolize commerce in fresh meat among the States, in violation of the Sherman Law, that a combination exists among independent meat

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dealers to restrain their respective agents from bidding against each other when purchasing live stock for them in the stock yards. *Ib.* 2—636

6. Sufficiency of Complaint—Action Under Sherman Law.—The complaint, in an action to recover damages under section 7 of the Sherman Law, which sets forth, among other things, that defendants are members of a local labor union, which is a branch of a larger organization covering several States, which in its turn is subordinate to the American Federation of Labor, which covers still other States; that defendants, by reason of such membership, were able to compel, and undertook to compel, and did compel, plaintiffs, against their will, to unionize their factory, by withdrawing from plaintiffs' employment, by preventing others from working for them, and by boycotting, with the aid of their associates, plaintiffs' goods in the hands of plaintiffs' customers in other States. *Held* sufficient on motion for correction of same. *Loewe & Co. v. Lawlor et al.*, 130 F., 633. 2—854

7. Sufficiency of Petition in Action for Damages.—A petition to recover three-fold damages for injury to plaintiff's business in interstate and foreign commerce, under the Sherman Law, states a cause of action where it alleges that plaintiff was a manufacturer of tobacco which it sold in interstate and foreign commerce, and facts showing that defendants conspired to render its business unprofitable and ruin and destroy the same through competing corporations, which they secretly controlled, by enticing away its workmen, by compelling it to pay more than the normal price for leaf tobacco, and to adopt unnecessary and expensive means to sell its products, and that such conspiracy was carried out to the damage of plaintiff in a sum stated; such acts constituting both a conspiracy to restrain interstate commerce and an attempt to monopolize the same, in violation of sections 1 and 2 of the act. *People's Tobacco Co. v. American Tobacco Co.*, 170 F., 408. 3—678

8. Sufficiency of Allegations.—Plaintiff alleged that, having been engaged in the purchase of raw sugar in different States and in their transportation to Pennsylvania, where it manufactured the same into refined sugar and sold the same in interstate commerce, it suspended business during the Spanish War, and enlarged its refinery, preparing and intending to resume business, when defendants conspired to prevent it from engaging in business, and accomplished this result by inducing plaintiff's majority stockholder to accept a loan, pledging his stock as collateral with voting power, by which defendant elected new directors, who voted that plaintiff should do no business; that the object of such conspiracy was to prevent plaintiff from engaging in business in com-

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petition with defendant. *Held*, that the conspiracy alleged directly operated not alone on the manufacture of sugar within the State of Pennsylvania, but on interstate commerce in the transportation and delivery of both the raw material and the manufactured product, and was therefore within the Sherman Law. *Penna. Sugar Ref. Co. v. American Sugar Ref. Co.*, 166 F., 258. 3—558

9. *Same*—Continuance of Business.—Where plaintiff, in a suit to recover treble damages under the Sherman Law, alleged that plaintiff had been engaged in interstate commerce, but had temporarily ceased business and enlarged its refinery at large expense, and prepared and intended to resume business as before, but had been prevented from doing so by defendant's alleged acts, the complaint was not demurrable as showing that plaintiff was not engaged in business and had no established business to injure at the time of the conspiracy. *Ib.* 3—561
10. A complaint to recover damages under the Sherman Law charged that defendants combined and conspired to prevent plaintiff from engaging in business and in interstate commerce, and induced S., who was a majority stockholder in plaintiff corporation, to accept a loan from defendant company and pledge as security a majority of plaintiff's capital stock with the absolute voting power; that defendant used such power to elect directors favorable to carrying out the object of the conspiracy, which defendant did by voting that plaintiff should not engage in business—the complaint stated a conspiracy in restraint of interstate trade and commerce in violation of the act. *Ib.* 3—562
11. Sufficiency of Bill.—A bill by a manufacturer of proprietary medicines, sold only to wholesale and retail druggists having direct contracts with complainant, to enjoin defendant from inducing such customers to break such contracts by selling to defendant in violation of their terms, is sufficiently certain although it does not specify the customers who have so been induced to violate their contracts, where it shows that, before reselling the medicines so procured, defendant removes the cartons, labels, and serial numbers from the bottles, so that they can not be traced to any particular customer. *Dr. Miles Medical Co. v. Jaynes Drug Co.*, 149 F., 840. 3—106
12. *Same*.—Such a bill states a cause of action for an injunction where the contracts sought to be protected are lawful. *Ib.* 3—107
13. Sufficiency of Complaint.—A complaint under the Sherman Law for damages is not insufficient as failing to show a violation of the law or injury to plaintiff, where it sets out the origin and history of one of defendant companies in absorbing

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competing companies engaged in manufacturing tobacco; a history of the formation, growth, etc., of the other defendant company; absorption of the latter by the former, under an agreement to keep the purchase secret, all done in furtherance of the first company's purpose to monopolize the business of manufacturing tobacco and cigarettes in violation of such law; a conspiracy between the two companies to monopolize the supply of manufactured tobacco throughout the country; that in furtherance of a general plan to restrain interstate trade in tobacco, and monopolize its manufacture and sale, defendants first resorted to unfair and oppressive means, fully set out, to prevent plaintiff company's organization; that plaintiff's stockholders and prospective stockholders were threatened with injury in business if they pressed the plaintiff's business; that one of plaintiff's incorporators was offered inducements to abandon plaintiff; that false and unjust statements were circulated concerning plaintiff; that plaintiff established a prosperous interstate business and would have grown but for defendants' unlawful acts; that plaintiff's customers were unlawfully taken away by defendants' threats and inducements; that cigarettes were sold below cost; that jobbers and dealers in plaintiff's territory were given free goods and extra discounts to press sales as against plaintiff's goods; that defendants' employee obtained employment as plaintiff's sales manager to injure and did injure plaintiff's business in a specified way, as part of defendants' scheme; that defendants conspired to destroy plaintiff's business, etc. *Ware-Kramer Tobacco Co. v. American Tobacco Co.*, 180 F., 170. 3—794

14. Sufficiency of Complaint.—A complaint in an action to recover treble damages under the Sherman Law, which alleges a combination and conspiracy between defendant and other interstate railroad companies to restrain and monopolize interstate commerce in anthracite coal in violation of sections 1 and 2 of the act, which, as alleged, was carried into effect (1) by increasing the price of coal at the mines, through ownership by the conspirators of the coal companies, and (2) by increasing the charge for transportation of coal to New York, so that the two together exceeded the tide-water price, and which contains a sufficient allegation of damage to plaintiff in his business as a coal dealer, states a cause of action under the act which is within the jurisdiction of a circuit court, the gist of the action being the unlawful conspiracy, and the fact that one of the means for carrying it into effect was an increase in freight rates, the reasonableness of which, per se must first be determined under the provisions of Interstate Commerce Act Feb. 4, 1887, c. 104, 24 Stat., 379 (U. S. Comp. St., 1901, p. 8154), by

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- the Interstate Commerce Commission, not constituting any ground for depriving plaintiff of the right of action expressly given by the Sherman Law. *Meeker v. Lehigh Valley R. R. Co.*, 183 F., 552. 3—974
15. Sufficiency of Complaint.—The complaint, in an action under the Sherman Law, to recover damages for injuries to plaintiff's business caused by an alleged combination and conspiracy between defendants in restraint of interstate trade and commerce and to monopolize such commerce, considered, and held sufficient on demurrer. *Hale v. O'Connor Coal & Supply Co.*, 181 F., 271. 3—812
16. Conciseness of Allegations.—The Sherman Law prohibits combinations in restraint of interstate trade and commerce, and section 2 prohibits conspiracies to monopolize or attempts to monopolize interstate trade and commerce. Section 7 provides that any person injured by a violation of either section may sue for and recover treble damages. Held that, in an action brought for such damages in a Federal court sitting in Kentucky, it was not necessary that the petition should state the facts showing a right of action with the particularity of an indictment, but that it was sufficient if the facts constituting a cause of action were stated as concisely as possible consistent with clearness, as required by Civ. Code Prac. Ky., §§ 90, 115. *Monarch Tobacco Works v. American Tobacco Co.*, 165 F., 779. 3—541
17. Same—Sufficiency of Allegations.—Civ. Code Prac. Ky., § 134, provides that, if the allegations of the petition are so indefinite or uncertain that the precise nature of the claim does not appear, the court may require that it be made more definite and certain by amendment. Held, that under the conformity act (Rev. St., § 914) a petition for treble damages to plaintiff because of defendants' alleged unlawful combination or conspiracy to monopolize interstate commerce in violation of the Sherman Law sufficiently charged general damages by an allegation that, by virtue of defendant's alleged unlawful acts, plaintiff had sustained damages in the sum of \$500,000. *Ib.* 3—546
18. When Sum Exacted in Addition to Reasonable Rate.—Where a complaint, under the Sherman Law, to recover treble damages for a combination in restraint of foreign commerce, alleged that plaintiffs were coerced by defendants' unlawful combination to pay a sum in addition to a reasonable freight rate, which was held subject to forfeiture in case plaintiffs shipped by other lines or their consignees received freight by other lines, and also contained general allegations of damage, it sufficiently alleged that plaintiffs had suffered damage by a violation of the act. *Thomsen v. Union Castle Mail S. S. Co.*, 166 F., 258. 3—550

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19. Sufficiency of, in Action for Damages Under Sherman Law.—

A declaration which alleges that defendant corporation was formed to suppress competition in shoe machinery, that, in pursuance of the plan, it and its officers, co-defendants, acted in combination and conspiracy in restraint of plaintiff's trade, that the trade to be restrained was interstate, that enumerated things were done by the corporation and its officers to attain such restraint of plaintiff's trade, that thereby competition was destroyed and the monopoly of the corporation sustained, and that plaintiff's property and business was injured thereby, states a cause of action under section 7 of the Sherman Law, authorizing any person injured in his business or property by any person or corporation, by reason of anything forbidden in the act, to sue therefor in the Federal Circuit Court in the district in which defendant resides or is found. *Strout v. United Shoe Mach. Co.*, 195 F., 316.

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20. Sufficiency of Declaration in Action for Damages.—A declaration

for civil damages for violation of the Sherman Law, alleged that defendant was, and since its organization had been, an illegal combination in restraint of trade and a monopoly, that each of its leases of machinery, copies of which were annexed, was a contract in restraint of trade and commerce, and that defendant by a created scheme and conspiracy monopolized the entire trade in shoe machinery and had excluded plaintiff from participation therein. It also charged that by reason of such conspiracy and monopoly defendant had prevented plaintiff from selling shoe machinery covered by plaintiff's patents and had rendered the same valueless, etc. *Held*, that the complaint was not demurrable for want of facts.

Calley v. United Shoe Mach. Co., 202 F., 601.

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21. Sufficiency of Declaration in Action for Damages.—A declaration

for civil damages for violating the Sherman Law, alleged that complainant trustee had succeeded to all the rights of a metal shoe fastening company owning patents on shoe machinery, which was incorporated to manufacture and sell to the trade, that defendant shoe machinery company was organized and continued to exist to maintain a monopoly of the shoe machinery business, that it had acquired such monopoly, and, having obtained a majority of the stock of plaintiff's corporation, refused to permit it to do business in order to prevent competition with other machines controlled by it, permitted the corporation's property to remain idle and become wasted until the patents were about to expire and had become practically worthless, and that the corporation had been greatly injured in its business by reason thereof. *Held* to state a sufficient cause of action to withstand a demurrer.

Strout v. United Shoe Mach. Co., 202 F., 604.

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22. **Same—Bill is Sufficient if it Charges the Doing of Acts in Terms Made Unlawful by the Clayton Law.**—A bill, if it charges the doing of acts by the defendants which are in terms made unlawful by the act, and that such acts tend to substantially lessen competition and to create a monopoly, is not insufficient because it does not allege that they were "unduly and improperly exercised." *U. S. v. United Shoe Mach. Co.*, 234 F., 149. 5—826
23. **Allegations in a Complaint by a Receiver of Coal Companies Against a Labor Organization, for Damages, for Unlawful Conspiracy, Held Sufficient as Against a General Demurrer.**—The complaint in an action brought under § 7 of the Sherman Law by the receiver of certain coal companies against a labor organization and its constituent organizations to recover damages for injury to the business and property of the coal companies by reason of a conspiracy and combination of defendants in violation of the Law, and acts done by them pursuant thereto, considered, and *Held* to state a cause of action as against a general demurrer. *Dowd v. United Mine Workers of America*, 235 F., 7. 6—657
24. **Same—In an Action for Damages, a Declaration Alleging That by Means of Certain Contracts, Defendant Had Illegally Restricted the Sale and Transportation of Lasts, Stated a Cause of Action Under the Sherman Law.**—A declaration, in an action for damages against the rubber company, alleging that by means of such contracts it illegally restricted, limited, and controlled the interstate sale and transportation of lasts, though not explicitly and in the language of the statute alleging a monopolizing, or an attempt to monopolize, stated a cause of action under the Sherman Law, prohibiting every person from monopolizing or attempting to monopolize any part of the trade or commerce among the several States, as "trade" necessarily involves both buying and selling, and a complete domination of either is a domination of the trade; and "control," as used in the declaration, was the substantial equivalent of "monopoly," as used in the statute. *Hood Rubber Co. v. U. S. Rubber Co.*, 229 F., 587. 6—429
25. **Same—Declaration Construed as Alleging Contracts Made by a Rubber Company Were in Unreasonable Restraint of Trade.**—A declaration, setting out the facts mentioned, stated no combination or conspiracy in restraint of trade, as against the rubber company, and was to be supported, if at all, as alleging contracts made by it in unreasonable restraint of interstate trade, or a monopolization of that trade. *Ib.* 6—427
26. **Declaration Need Only Set Out with Reasonable Certainty Causes Resulting in Plaintiff's Injury.**—To require the party injured by the conspiracy denounced by section 1 of the Sherman

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Law, to set out his cause of complaint with that degree of nicety and precision in stating times, places, methods, and persons required by the ordinary rules of common-law pleading, would be to nullify the beneficent purpose of the statute, and a declaration will not be stricken out, even though it may contain some statements of a general or indefinite character, if it sets out with reasonable certainty and definiteness the causes which resulted in plaintiff's injury and connects the defendant therewith, any defendant deeming himself prejudiced by any such generality of statement having the right to move for a bill of particulars. *Buckeye Powder Co. v. Du Pont Powder Co.*, 196 F., 522. 4—571

27. Same—Declaration Held Sufficient, But Certain Allegations Stricken Out.—The declaration in an action under section 7 of the Sherman Law, to recover damages for the violation of sections 1 and 2 of the act, construed, and *Held* not subject to a motion to strike out for uncertainty and indefiniteness of statement, but certain allegations stricken out as irrelevant. *Ib.* 4—572

28. Same—Bill Alleging Defendant Made Leases of Shoe Machinery Containing Provisions Prohibiting Lessees from Purchasing or Using Other Machines, States Cause of Action Under the Clayton Law, etc.—A bill alleging that the corporation defendant made leases of shoe machinery to manufacturers for use throughout the United States which contained provisions prohibiting the lessees from purchasing or using machines of other makers under penalty of increased rental, or of the cancellation of leases under which indispensable machines not otherwise obtainable were in use, *Held* to state a cause of action for violation of section 3 of the Clayton Act, although it was not alleged that the lessees expressly bound themselves to observe such restrictions. *U. S. v. United Shoe Mach. Co.*, 234 F., 147. 5—822

29. Allegations That an Ice Company Is Engaged in Cutting Ice in One State and Selling It in Another, Not Sufficient to Show Corporation Is Engaged in Interstate Commerce.—Allegations that an ice company is engaged in cutting and harvesting ice in New Hampshire and transporting the same to Boston and selling it in Boston are not sufficient to show that the corporation is engaged in interstate commerce. *Corey v. Independent Ice Co.*, 207 F., 461. 5—334

30. Same—General allegations That Defendants Entered into a Combination, etc., Held Insufficient, As Pleading Conclusions.—General allegations in a pleading that defendants entered into a combination and conspiracy in restraint of interstate commerce in violation of the Sherman Law, *Held* insufficient as pleading conclusions. *Ib.* 5—337

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- 31. Bill to Enjoin Consolidation of Railroads As in Violation of State Laws, Held Insufficient as Failing to Show Restraint on Exclusively Intrastate Transportation.**—A bill does not state a cause of action for an injunction to restrain the consolidation of two railroad companies as being in violation of the anti-trust laws of certain States, where it alleges no facts showing any restraint upon transportation exclusively in any one of such States. *DeKoven v. L. S. & M. S. Ry. Co.*, 216 F., 956.
5—472
- 32. When General Averment of Injury Insufficient.**—Where in an action by a stockholder of a corporation against defendant, the only injury alleged was to the corporation, a general averment that plaintiff had been greatly injured in his business and property was insufficient as an allegation of injury to plaintiff distinct from that to the corporation. *Ames v. American Tel. & Tel. Co.*, 166 F., 822.
3—588
- 33. Same.**—The possibility that proof may be introduced at the trial of an injury other than that alleged in the declaration will not require the overruling of a demurrer thereto. *Id.*
3—590
- 34. Where a count in a complaint against an interstate carrier alleged a discrimination in rates against plaintiff, in that defendant charged plaintiff the full tariff rates and permitted plaintiff's competitors by a device to transport their similar products at a lower rate, it stated a cause of action for violating the Interstate Commerce Act prohibiting discrimination, and was therefore not demurrable, though it also insufficiently attempted to allege a combination or conspiracy, on defendant's part, with certain other railroads to restrain trade, and to recover treble damages under the Sherman Law.** *American Union Coal Co. v. Penna. R. R. Co.*, 159 F., 279.
3—314
- 35. Conclusions of Law Not Admitted by Demurrer.**—An allegation in a complaint against an interstate carrier that plaintiffs had been obliged to pay excessive and unlawful rates without any facts to support the same was a statement of a mere conclusion of law, which was not admitted by demurrer. *Meeker v. Lehigh Valley R. R. Co.*, 162 F., 364.
3—394
- 36. Same.**—In an action for injuries to complainant's property and business by an alleged combination and conspiracy between interstate railroads controlling the shipment of anthracite coal an allegation that plaintiffs' loss resulted from their being obliged to pay "unlawful rates" for the transportation of coal due to such combination and conspiracy was not effective to allege that the rates charged had been declared unlawful by the Interstate Commerce Commission. *Id.*
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- 37. In Action for Damages, Facts Which Must Be Plead.**—In an action under section 7, of the Sherman Law, to recover damages for injury alleged to have been caused to plaintiff by reason of contracts made by defendant in restraint of trade or commerce among the several States or with foreign nations, and an attempt by defendant to monopolize such trade or commerce, or a part thereof, in violation of said act, it is not sufficient to frame the declaration in the language of the statute, but the nature and substance of the contracts relied upon, and the substantial facts alleged to constitute an attempt at monopoly must be pleaded to enable the court to determine whether they are in violation of the statute, and to enable the defense to properly prepare to meet the charge. *Ciley v. United Shoe Machinery Co.*, 152 F., 728. 3—207
- 38. Complaint Must Allege Rate Paid Declared Excessive by Interstate Commerce Commission.**—Congress by the Interstate Commerce Act of Feb. 4, 1887, as amended by Act June 29, 1906, having established the Interstate Commerce Commission with plenary power to determine in the first instance what rates for the transportation of interstate commerce are legal and reasonable and what are illegal and excessive, it will be presumed, in the absence of averments to the contrary, that every interstate carrier has complied with the law by establishing, printing, filing, publishing, and posting them; and hence no action can be maintained unless the complaint alleges that resort has been had to the Interstate Commerce Commission and the rate charged and paid declared excessive or unreasonable. *Meeker v. Lehigh Valley R. R. Co.*, 162 F., 362. 3—391-3
- 39. Facts Which Must Be Alleged and Proven, to Sustain Action for Damages.**—To sustain an action for damages under the Sherman Law, the plaintiff must allege, as well as prove, that defendant committed one or more of the acts declared to be unlawful by sections 1 and 2 thereof, by either entering into a contract, combination, or conspiracy in restraint of interstate or foreign trade or commerce or monopolizing or attempting to monopolize a part of such trade or commerce, and in such clear and unambiguous language and with such reasonable certainty that the defendant and the court may be apprised of the alleged cause of action. *Buckeye Powder Co. v. Du Pont Powder Co.*, 196 F., 516. 4—563
- 40. Same—In Suit for Unfair Competition, Fraud Must Be Plead and Proved.**—Fraud is the basis of all actions of unfair competition, and, as that is never presumed, the facts relied on to show fraud must be pleaded and proved. *Motion Picture Pat. Co. v. Eclair Film Co.*, 208 F., 417. 5—345
- 41. In Action for Damages, Caused by a Conspiracy, What Facts Must Be Alleged.**—In an action for damages, caused by a

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combination and conspiracy in restraint of the manufacture and interstate sale of coated wire nails, a count containing no description of the trade, or of the business situation to which the alleged conspiracy or combination applied, and which did not describe plaintiff's business, or that of defendant, and which contained no allegations that defendant's acts were intended to affect anybody but plaintiff, nor that they were a part of any general scheme or conspiracy relating to, and affecting in any broad or substantial manner, the manufacture and sale of such nails, or that they did or could affect such manufacture and sale generally, was insufficient. *American Steel Co. v. American Steel & Wire Co.*, 244 F., 303.

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42. Same—Must Allege Conditions in Trade, the Alleged Conspiracy, and Its Effect on the Business of Complainant.—In an action against an illegal monopoly for damages under the Sherman Law, the declaration must describe the conditions in the trade in question, the alleged conspiracy or combination, and the business of plaintiff, and the effect thereon of the alleged conspiracy or combination, sufficiently so that the court can see that its acts might have affected the general conditions in the trade, and that plaintiff's business and situation were such that it might have been damaged by its conduct. *Ib.*

6—1023

43. Where Question Relates to Jurisdiction, Averments Must Be Positive.—Where the question relates to the jurisdiction of Federal courts under a Federal statute, the averments of the pleadings purporting to give jurisdiction must be positive, and argumentative inferences are insufficient. *Strout v. United Shoe Mach. Co.*, 195 F., 317.

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44. Alleging Fraudulent Concealment in Reply to Defense of Limitations—Fraud Effecting Concealment Must Be Specified.—Where plaintiff alleges fraudulent concealment in reply to a defense of limitations, it is not sufficient to allege generally that defendants fraudulently concealed the cause of action, but the fraud whereby such concealment was effected must be specified; nor will specific allegations of frauds or falsehoods by the defendants suffice, unless concealment of the cause of action would necessarily follow from them. *Strout v. United Shoe Mach. Co.*, 208 F., 651.

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45. Same—Must Specify Date and Circumstances of Discovery.—Plaintiff, in alleging fraudulent concealment in reply to a defense of limitations, must specify the date and circumstances of his discovery of the cause of action, and show that, though he exercised reasonable diligence, he was unable to discover it sooner. *Ib.*

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46. Same—Substituted Trustee Must Show Fiduciary Relation, Requiring Disclosure of Facts.—Where, in an action by a substi-

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tuted trustee of a corporation, appointed in dissolution proceedings, against those previously in control of the company for damages, due to defendants' acts, which were alleged to constitute an unlawful restraint of trade only, defendants pleaded limitations, and there was nothing to show a fiduciary relation between defendants and plaintiff, or his predecessor, requiring a disclosure of the facts, nor any breach of trust alleged as a basis of the action, there was nothing to relieve plaintiff from the obligation of specifying the fraud in a reply alleging fraudulent concealment of the cause of action; and hence a reply merely alleging that defendants fraudulently concealed the cause of action from plaintiff and his predecessor was insufficient. *Ib.* 4—552

47. In Action for Damages, Complaint Charging Executor in Representative Capacity for Acts of Decedent, Not Objectionable.—Where it was sought to hold executors liable for the acts of their decedents, the complaint is not objectionable, because charging them in their representative capacity. *United Copper Sec. Co. v. Amalgamated Copper Co.*, 232 F., 576. 6—446
48. Same—Date of Death of Decedent, As Well As Date of Conspiracy, Should Be Pleading.—In an action under section 7 of the Sherman Law, for treble damages for a conspiracy in restraint of trade between defendants' testators and others, the dates of the death of the decedents, as well as of the accomplishment of the conspiracy, should be pleaded. *Ib.* 6—446
49. Same—Although Individuals Can Not Recover for Corporate Injury, Allegations As to Conspiracy Against Corporations, Are Proper, in Action for Damages to Individuals.—In an action under section 7 of the Sherman Law, for damages resulting to individuals from a conspiracy to injure them and also certain corporations in which they were stockholders, allegations as to the conspiracy against the corporations are proper, although the individuals could not recover for the corporate injury. *Ib.* 6—446
50. Multifariousness.—A bill setting up a claim for damages under the Sherman Law and also asking an injunction restraining defendant from using complainant's trade-mark and trade name, is multifarious, as joining two distinct causes of action, having no connection with each other, and one of which is triable at law. *Block v. Standard Distilling & Distributing Co.*, 95 F., 978. 1—993
51. Multifariousness of Bill.—A bill for relief by a minority stockholder, on behalf of himself and all other stockholders similarly situated to set aside an alleged unlawful transfer of the property of the corporation in pursuance of a conspiracy between its officers and the transferee in restraint of trade and commerce, and which also seeks the recovery of treble damages under the Sherman Law is multifarious, since such

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damages are only recoverable in an action at law by the plaintiff as an individual, and not as a stockholder, while the equitable relief prayed for is in behalf of the corporation, and, if granted, would inure to the benefit of all the stockholders. *Metcalf v. Amer. School Furniture Co.*, 108 F., 909. 2—75

52. **Multifariousness of Bill—Waiver.**—The failure of defendants to object to a bill on the ground of multifariousness until final hearing, or until after complainant has taken his proofs, is a waiver of objection, and, while the court on such hearing may of its own motion dismiss the bill, it will not do so if that objection does not embarrass or prevent the decreeing of relief (Per *Buffington*, C. J.) *U. S. v. Reading Co.*, 183 F., 462. 3—917

53. **Duplicity.**—A declaration in an action brought under section 7 of the Sherman Law to recover damages for a violation of section 1 of the act, which alleges in a single count that defendant entered into a "contract, combination, and conspiracy" in restraint of trade, is bad for duplicity. *Rice v. Standard Oil Co.*, 134 F., 464. 2—633

54. **Same**—The Sherman Law makes a distinction between a contract and a combination or conspiracy in restraint of trade. *Id.* 2—634

55. **Same—Declaration Alleging Conspiracy, and Also the Making of Contracts, Not Duplicious.**—A declaration in an action for damages which alleges a conspiracy to monopolize interstate commerce in certain articles, is not bad for duplicity because it also alleges the making of contracts and combinations, where they are but steps in such conspiracy. *Buckeye Powder Co. v. Du Pont Powder Co.*, 196 F., 517. 4—565

56. **A Charge of Illegal Combination, and of Monopoly, in One Count of Declaration, Does Not Render It Duplicious and Uncertain.**—Since the thing forbidden by the Sherman Law, may consist of a scheme or an unlawful combination as a whole, a declaration for civil damages authorized by section 7 of that Law, charging in a single count that defendant was an illegal combination in restraint of trade, etc., and that by reason of conspiracy and monopoly defendant had practically monopolized the entire business of manufacturing shoe machinery in the United States, and had utterly destroyed plaintiff's interstate trade and commerce in such machinery and rendered plaintiff's patents valueless, etc., was not objectionable for duplicity and uncertainty on the theory that each one of the things forbidden in sections 1 and 2 of that Law were distinct offenses, and that the declaration should charge such separate offenses in separate counts. *Cilley v. United Shoe Mach. Co.*, 202 F., 600. 4—559

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- 57. Same—Charge of Illegal Combination, and of Monopoly, in One Count of Declaration, Does Not Render It Duplicious and Uncertain.**—Since the thing forbidden by sections 1 and 2 of the Sherman Law, may consist of a scheme as a whole or an unlawful combination as a whole, a declaration for civil damages authorized by section 7, charging in a single count that defendant was an illegal combination in restraint of trade, etc., and that by reason of conspiracy and monopoly defendant had practically monopolized the entire business of manufacturing shoe machinery in the United States, and had utterly destroyed plaintiff's interstate trade and commerce in such machinery, and rendered plaintiff's patents valueless, etc., was not objectionable for duplicity and uncertainty, on the theory that each one of the things forbidden in sections 1 and 2 were distinct offenses, and that the declaration should charge such separate offenses in separate counts. *Strout v. United Shoe Mach. Co.*, 202 F., 604. 4—543.
- 58. Indefiniteness.**—In an action by a corporation for the infringement of elevator patents, an answer alleging as a defense that the plaintiff is an unlawful combination in restraint of trade and in violation of the Sherman Law, but which fails to state who are in the combination in the agreement characterized as unlawful, and does not disclose fully and in detail that the combination was entered into after the act took effect, and all the facts necessary to show its illegality, is insufficient for indefiniteness. *Otis Elevator Co. v. Geiger*, 107 F., 131. 2—66
- 59. Allegations of an Existing Business Unnecessary.**—In order to state a cause of action for damages for conspiracy in restraint of interstate commerce under the Sherman Law, it is not necessary to allege injury to an existing business, though it is necessary to state facts showing an intention and preparedness to engage in business, it being as unlawful to prevent a person from engaging in business as it is to drive one out of business. *American Banana Co. v. United Fruit Co.*, 166 F., 264. 3—566
- 60. Same—Incidental Allegations.**—Where a complaint for conspiracy in restraint of foreign commerce in violation of the Sherman Law charged injury to plaintiff's plantation by Costa Rican officials resulting from an alleged conspiracy with defendant, and also that defendant controlled the banana market in the West Indies and in Central and South America and prevented plaintiff from buying and shipping bananas to the United States and selling them to its great profit, which it would otherwise have done, such latter allegation would be treated as incidental to plaintiff's demand for damages for injury to its plantation, in the absence of an allegation that plaintiff had invested any money in preparing to engage in

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buying, shipping, and selling bananas as a business independent of the operation of its own plantation. *Ib.* 3—567

61. **When General Allegations of Result of Combination Sufficient.**—Where a declaration sufficiently charges a contract or combination on the part of defendants in restraint of trade and commerce among the States, in violation of the Sherman Law, general allegations showing that the result of such contract or combination was to deprive plaintiff of customers and prevent it from making a profit in its legitimate business as theretofore are sufficient to support an action for treble damages, under section 7 of the Law. *Wheeler-Stenzel Co. v. National Window Glass Jobbers' Ass'n*, 152 F., 874. 3—223
62. **Inconsistent Allegations in Declaration and Replication—Effect.**—Where, in a suit by a substituted trustee of a corporation to recover damages alleged to have resulted to the corporation's business from a secret conspiracy by defendants in alleged violation of the Sherman Law, plaintiff described himself as trustee of the corporation, and alleged that he had been appointed substituted trustee in a proceeding in Maine for the disposition of the corporation, and that the decree vested in his predecessor all the corporation's choses of action, property, etc., and that he had succeeded thereto, and had received authority to collect all debts and claims due the corporation, his denial in a replication that the corporation or its officers, after the decree had been entered, were without control of the corporation's affairs or management, was inconsistent with the allegations of his declaration, and no force could be given thereto. *Strout v. United Shoe Mach. Co.*, 208 F., 650. 4—549
63. **Certain Inconsistent Prayers in Bill Held Did Not Render It Fatally Defective.**—The term "alternative," as used in Equity Rule 25, allowing relief to be stated and sought in alternative forms, means mutually exclusive, and the term "cause of action," being defined as composed of the right of the complainant, and the obligation, duty, or wrong of the defendant, combined, a bill praying the destruction of a railroad lease as obnoxious to the Sherman Law, and also the preservation of the present status of the stock of the lessor company which depended entirely on a lease sought to be annulled, was not fatally defective because the prayers were inconsistent. *Boyd v. N. Y. & H. R. R. Co.* 220 F., 179. 5—518
64. **Same—Indefiniteness of Statement No Ground for Motion to Dismiss, if Bill States Cause of Action.**—In the Federal courts of equity, indefiniteness of statement in a bill is not ground for a motion to dismiss, if, fairly construed, it states a cause of action; but the defendant has an adequate remedy under

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- equity rule 20 by motion for more particular statement.
U. S. v. United Shoe Mach. Co., 234 F., 137. 5—808
65. Same—When Instruments in Writing Need Not Be Set Out.—Instruments of writing need not be set out in extenso in a bill, unless the bill shows that it is essential to the proper construction of the particular clauses complained of, and which are set out. *Ib.* 5—810
66. In Indictments, Not Necessary to Set Out Numerous Documents by Their Tenor.—Where, in an indictment, it is necessary to plead numerous documents which in themselves were not directly the subject matter of the litigation, it is not necessary to set out each instrument by its tenor. *U. S. v. Winslow*, 195 F., 582. 5—176
67. Technical Defects in Bill.—That a bill for injunction contains no prayer for process, this being a mere technical defect, although it renders the bill demurrable, does not affect the jurisdiction of the court or render the injunction issued thereon void. *U. S. v. Agler*, 62 F., 824. 1—294
68. Same—Defendants Not Named in Bill Nor Served with Subpoena.—An injunction for such purpose becomes binding as against one not named in the bill, and not served with subpoena, when the injunction order is served on him as one of the unknown defendants referred to in the bill. *Ib.* 1—298
69. Same—Proceedings to Punish Violation.—An information to punish violation of such an injunction order which fails to allege that the order was a lawful one, in the language of the statute, or that the person charged, not named in the order, was one of the unknown parties referred to therein, or that, either by his words or his acts, he was engaged in aiding the common object with other members of the alleged combination, lacks the necessary certainty. *Ib.* 1—300
70. Allegations on Belief.—An allegation that plaintiff has "reason to believe," and therefore "alleges," etc., is sufficient under Revisal N. C. 1905, § 489, requiring matter to be alleged as of plaintiff's knowledge or upon "information and belief." *Ware-Kramer Tobacco Co. v. American Tobacco Co.*, 180 F., 169. 3—792
71. A bill in equity should be construed to mean what it fairly conveys by a fairly exact use of English speech. *Ib.* 3—788
72. In Civil Actions, Pleadings Are to Be Taken to Mean What Their Language Fairly Imports.—In modern practice, pleadings in civil actions at law or in equity are not construed with the strictness formerly applied to criminal indictments, but are to be taken to mean what their language fairly imports. *U. S. v. United Shoe Mach. Co.*, 234 F., 136. 5—807
73. Allegations of Continuance of Conspiracy—How Denied.—Allegations in the indictment consistent with other facts alleged that a conspiracy continued until the date of filing must be

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- denied under the general issue and can not be met by special plea in bar. *U. S. v. Kissel*, 218 U. S., 610. 3—825
74. All Defenses Open Under General Issue.—This court, having on an appeal under the criminal appeals act held that allegations as to continuance of a conspiracy can not be met by special plea in bar, all defenses, including that of limitations by the ending of the conspiracy more than three years before the finding of the indictment, will be open under the general issue and unaffected by this decision. *Ib.* 3—825
75. Liberal Latitude Allowed.—In an action under the Sherman Law to recover damages for an alleged unlawful conspiracy or combination in restraint of interstate trade and commerce, owing to the complicated nature of the case and the numerous elements which may enter into such a conspiracy, the plaintiff must be given liberal latitude in his pleading, and matter will not be stricken from his complaint on motion under a State statute as "irrelevant and redundant," unless it is clearly so; but matter which is manifestly purely evidentiary will be stricken out. *Ib.* 3—778
76. Amended Pleadings—Discretion of Court.—Granting or refusing leave to a plaintiff to file an amended statement of claim rests in the sound discretion of the court, and, where the application is to file an amended statement containing different counts as an entirety, the court may properly pass on it as an entirety. *Loeb v. Eastman Kodak Co.*, 183 F., 710. 3—983
77. Withdrawal of Plea to File Demurrer—Discretion of Court.—It is within the discretion of a Federal court to permit a defendant to withdraw a plea and file a demurrer on such terms as to costs as it deems just. *Ib.* 3—982
78. Pleas in Abatement—Grounds.—In the Federal courts, a plea in abatement in a criminal case may properly raise an issue of fact as to what evidence was presented to the grand jury. *U. S. v. Swift*, 186 F., 1019. 4—78
79. That United States Has Instituted Suit Against a Corporation as an Illegal Monopoly, No Defense to an Infringement Suit.—An allegation in the answer in an infringement suit that the United States had instituted a suit for the dissolution of complainant corporation as an illegal monopoly states no ground of defense, since the fact alleged, if proved, would be irrelevant. *Motion Picture Patents Co. v. Eclair Film Co.*, 208 F., 416. 5—344
80. In Suit by Minority Stockholder, Where Sole Relief Prayed Is for Damages, Bill Not to Be Construed to Require Corporation to Sue, etc.—Where the sole relief prayed in a bill by a minority stockholder of a corporation was that the defendants be decreed to pay over to the corporation treble damages sustained by a violation of the Sherman Law, it

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could not be construed as a bill to require the corporation, which was made a party, to sue the other defendants for such damages. *Fleitmenn v. United Gas Imp. Co.*, 211 F., 105.

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81. Where No Allegation of Violation of the Sherman Law Is Made in the Bill, a Decree That a Labor Union Was an Unlawful Combination Can Not Be Sustained.—A decree determining that a labor union was an unlawful combination or conspiracy in restraint of trade in violation of the Sherman Law could not be sustained where there was no allegation of defendant's violation of such law in the pleadings. *Mitchell v. Hitchman Coal & Coke Co.*, 214 F., 713. 5—631
82. Allegations in Petition, of Resort to Patented Cartons, as a Subterfuge to Evade the Law Against Price Restrictions, Not So Irrelevant As to Justify Striking Out.—The allegations in the petition, attacking as violative of the Sherman Law, price restrictions imposed by a manufacturer on the resale of its product, packed in patented cartons, that it resorts to the cartons as a subterfuge to evade such law, is not so clearly irrelevant as to justify its elimination on motion to strike out, though the fact of the cartons being resorted to as a subterfuge be not necessary to lack of protection of the transaction by the patent. *U. S. v. Kellogg Toasted Corn Flake Co.*, 222 F., 730. 5—857

II. PRACTICE.

83. Bill and Answer—Waiver of Oath.—Where the bill for injunction waives the oath of the respondents, an answer, under oath, denying all the equities of the bill, can, under the amendment to equity rule 41, be used at the hearing with probative force of an affidavit alone. Whether the injunction should issue must be determined by the whole evidence submitted. *U. S. v. Workmen's Amalg. Council*, 54 F., 994. 1—110
- Case affirmed, 57 F., 85 (1—184).
84. Hearing on Bill and Answer—Evidence.—When a suit is heard on bill and answer, the allegations of fact in the bill that are denied in the answer are to be taken as disproved, and the averments of fact in the answer stand admitted. *U. S. v. Trans-Mo. Ft. Assn.*, 58 F., 77. 1—212
85. Same.—Where the contract is admitted, but the allegations tending to show its sinister purpose, tendency, and effect contained in the bill are denied by the answer, and averments tending to show a just and honest purpose, tendency, and effect are made, the latter averments contained in the answer stand admitted, and the contract will be presumed to have been made for an honest and legitimate purpose, unless

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- the provisions of the agreement clearly show the contrary. In the examination of such a contract, fraud and illegality are not to be presumed. *Ib.* 1—212
86. Notice—Restraining Order.—Under section 4 of the Sherman Law, a restraining order may be issued without notice, under the circumstances sanctioned by the established usages of equity practice in other cases. *U. S. v. Coal Dealers' Assn. of Cal.*, 85 F., 252. 1—749
87. What Must Be Shown.—In order to maintain a suit under the Sherman Law the Government is not obliged to show that the agreement in question was entered into for the purpose of restraining trade or commerce, if such restraint is its necessary effect. *U. S. v. Trans-Mo. Ft. Assn.*, 166 U. S., 290. 1—649
88. Allegations and Proofs—Means Contemplated.—It is not incumbent upon the prosecution to prove that all the means set out in the indictment were in fact agreed upon to carry out the conspiracy, or that any of them were actually used or put in operation. It is sufficient if it be shown that one or more of the means described in the indictment were to be used to execute that purpose. *U. S. v. Cassidy*, 67 F., 698. 1—450
89. Same—Overt Acts.—While at common law it was not necessary to aver or prove an overt act in furtherance of a conspiracy, yet, under the statute relating to conspiracies to commit an offense against the United States, the doing of some act in pursuance of the conspiracy is made an ingredient of the crime, and must be established as a necessary element thereof, although the act may not be in itself criminal. *U. S. v. Thompson*, 31 Fed., 331, 12 Sawy., 155 cited. *Ib.* 1—459
90. Same.—It is not necessary, however, to a verdict of guilty that the jury should find that each and every one of the overt acts charged in the indictment was in fact committed; but it is sufficient to show that one or more of these acts was committed, and that it was done in furtherance of the conspiracy. *Ib.* 1—464
91. Allegation of Amount of Controversy.—It is not essential that a bill in a Federal court should state the amount or value in controversy, if it appears to be within the jurisdictional limits, from the allegations of the bill, or otherwise from the record, or from evidence taken in the case before the hearing of objections to the jurisdiction. *Robinson v. Suburban Brick Co.*, 127 F., 804. 2—312
92. When Parties Charged Jointly, Plaintiff Not Required to Elect.—Where a complaint for conspiracy to monopolize interstate trade and commerce charged all the defendants jointly with having entered each of the alleged combinations and con-

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spiracies complained of, and all the acts were alleged to have been done pursuant to a common design, plaintiff was not required to elect because some of the defendants were charged with doing one act and others with another. *Monarch Tobacco Works v. American Tobacco Co.*, 165 F., 782.

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93. **Jurisdiction of Court—How Raised.**—The question whether a suit in a Federal court is maintainable in the district where brought, under the statute, may be raised either by motion to set aside the service of process or by special demurrer, where a special appearance is made for that purpose only, and before pleading to the merits; but the right is waived by filing a general demurrer or pleading to the merits. *Ware-Kramer Tobacco Co. v. American Tobacco Co.*, 178 F., 119.

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94. **Pendency of Criminal Prosecution.**—Unless in an exceptional case, a Federal court of equity will not postpone the hearing and decision of a suit brought by the United States under Sherman Law to enjoin violation of the act to await the determination of a criminal prosecution against some of the same defendants based on the same alleged violations. *U. S. v. Standard Sanitary Mfg. Co.*, 191 F., 193.

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95. The only question before the Federal Supreme Court on an appeal taken under the act of March 2, 1907, Criminal Appeals, from a judgment sustaining a special plea in bar when the defendant has not been put in jeopardy, is whether such plea in bar can be sustained. *U. S. v. Kissel*, 54 L. ed., 1168.

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96. Under the practice in this country the examination of witnesses by a Federal grand jury need not be preceded by a presentment or formal indictment, but the grand jury may proceed, either upon their own knowledge or upon examination of witnesses, to inquire whether a crime cognizable by the court has been committed, and if so, they may indict upon such evidence. *Hale v. Henkel*, 201 U. S., 43.

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97. In summoning witnesses it is sufficient to apprise them of the names of the parties with respect to whom they will be called to testify without indicating the nature of the charge against them, or laying a basis by a formal indictment. *Ib.*

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See also WITNESSES; AND GRAND JURY.

98. In an action against corporations for violations of the Sherman Law the books of the various defendants both before and after the alleged combination, and the contracts between them, as well as other papers referred to in the opinion, are all matters of material proof, but whether material or not the testimony must be taken and exceptions can be noted by the ex-

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- aminer and the materiality of the evidence passed on by the court. *Nelson v. United States*, 201 U. S., 92. 2—921
99. **In Suit to Restrain Illegal Combination, Court Will Not Consider Minor Combinations.**—In a suit to restrain all defendants from carrying out an illegal combination under the Sherman Law in which all defendants participated, the court will not consider minor combinations between less than all of the defendants which did not constitute part of the general combination found to be illegal. To do so would condemn the bill for misjoinder and multifariousness. *U. S. v. Reading Co.*, 226 U. S., 372. 4—737
100. **Supreme Court Will Not Consider a Contention Raised for the First Time Before It, That One of Defendants Itself Was an Illegal Combination.**—Where an action under section 7 of the Sherman Law was tried in the circuit court and argued in the Circuit Court of Appeals on the basis of coöperation between the defendants, the Supreme Court will not consider a contention raised for the first time that one of the defendants was itself a combination offensive to the statute. *Virtue v. Creamery Package Mfg. Co. et al.*, 227 U. S., 38. 4—835
101. **Where Main Suit Is Settled, Every Proceeding Dependent Thereon, Is Settled.**—Where the main suit in which an injunction order has been granted is settled and discontinued, every proceeding which is a part thereof, or dependent thereon, is also necessarily settled as between the parties. *Gompers v. Bucks Stove & Range Co.*, 221 U. S., 451. 4—791
102. **Same—Variance Between Procedure to Punish for Civil and Criminal Contempts.**—There is a substantial variance between the procedure adopted and punishment imposed, when a punitive sentence appropriate only to a proceeding for criminal contempt is imposed in a proceeding in an equity action for the remedial relief of an injured party. *Ib.* 4—789
103. **Objections to Demurrer, Not Passed On, etc., When They May Again Be Raised in the Trial Court.**—An objection to the demurrer made by certain defendants and sustained as to one count, and not passed on as to other counts which were struck down by the district court but sustained by the Supreme Court, may be raised in the district court by such defendants in regard to such counts when the case is again before that court. *U. S. v. Pacific & Arctic R. & N. Co.*, 228 U. S., 108. 5—233
104. **Same—When Reversing Judgment of a District Court, Sustaining Demurrer to Indictment, Supreme Court Will Leave Open to Trial Court Questions Not Passed Upon on Former Ruling.**—The Supreme Court, when reversing a judgment of a Federal district court, sustaining demurrers to an indictment charging violations of the Sherman Law, which is

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- based upon the construction of that act, will leave it open to that court to pass upon such of the grounds of demurrer as were not considered in the former ruling, especially where the Government does not express great confidence in the sufficiency of the indictment. *Ib.*, 57 L. Ed., 742. 5—233
105. Where State Court Dismissed Bill Because Acts Charged Not Within the Statute, the Judgment Will Be Reversed on That Ground, and Other Questions Not Decided.—Where the State court dismissed the bill solely on the ground that defendant's acts were not within the denunciation of the Federal statute on which plaintiff relied, the judgment will be reversed on that ground and it is unnecessary for this court to decide other Federal questions involved. *Straus v. American Pub. Assn.*, 231 U. S., 236. 4—856
106. Where Two Parties Petition for Writs of Certiorari When One Will Be Denied.—Where two parties petition for writs of certiorari to review the same judgment, but the entire matter can be disposed of on one petition, the other will be denied. *Gompers v. U. S.*, 233 U. S., 607. 4—795
107. Where Statute of Limitations Pleaded, When General Exception Sufficient.—Where the statute of limitations was pleaded, and, after a decision that it was inapplicable, one general exception was presented on his behalf in that regard, the rights of the defendant are sufficiently preserved. *Ib.* 4—796
108. On Demurrer, When Facts Justify, Court May Assume Transaction Complained of Was Interstate.—Where the pleading of the plaintiff in error demurred to, justified the inference that the transaction alleged to be in violation of the Sherman Law was interstate, the court may assume that such was the case, and, if the decision turns on the construction of the act, a Federal question is involved. *Wilder Mfg. Co. v. Corn Products Ref. Co.*, 236 U. S., 171. 6—551
109. Supreme Court Will Not Pass on Moot Questions.—The Supreme Court can not pass upon questions which have, as an inevitable legal consequence of the European War now flagrant, become moot. *U. S. v. Hamburg-American Line*, 239 U. S., 475. 4—910
110. Same—Will Take Judicial Notice of European War.—The Supreme Court takes judicial notice of the European War and that its inevitable consequence has been to interrupt the steamship business between this country and Europe. *Ib.* 4—910
111. Same—Will Not Establish Rule for Controlling Predicted Future Conduct.—It is a rule of the Supreme Court, based on fundamental principles of public policy not to establish a rule for controlling predicted future conduct; and it will not decide a case, involving a combination alleged to be in viola-

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- tion of the Sherman Law, which has become moot as a legal consequence of war, because of probability of its being recreated on the cessation of war. *Ib.* 4—910
112. Same—Will Reverse Case Decided Against Government Where It Has Become Moot, and Remand with Directions to Dismiss Bill Without Prejudice.—Where a case to dissolve a combination alleged to be illegal under the Sherman Law has become moot and the Supreme Court has thus been prevented from deciding it upon the merits, and the court below decided against the Government, the course most consonant with justice is to reverse, with directions to dismiss the bill without prejudice to the Government in the future to assail any actual contract or combination deemed to offend the Sherman Law. *Ib.* 4—912
113. Writ of Error Allowed by Supreme Court, When Should Go to Circuit Court of Appeals, Although Trial Court Has Dismissed the Cause.—For review in the Supreme Court of a final judgment of the Circuit Court of Appeals directing that an action be dismissed, the writ of error should go to that court; and its efficacy is not impaired by the circumstances that, before the allowance of the writ by that court, the trial court, obeying the mandate, has entered judgment of dismissal and has adjourned for the term before any application has been made to recall its action. *Thomsen v. Caysen*, 243 U. S., 82. 6—724
114. Same—When Consent to Final Judgment Not a Waiver of Errors Relied on.—When parties in the Circuit Court of Appeals, desiring to shorten the litigation by bringing the merits directly to the Supreme Court, consent that a final judgment may be made against them in lieu of one remanding the cause for a retrial, the consent is not a waiver of errors relied on, and a final judgment entered as requested is reviewable in the Supreme Court. *Ib.* 6—725
115. Court May Allow New Cause of Action to be Set up by Amendment.—The trial court in its sound discretion may allow a new cause of action to be set up by amendment of the complaint. *Ib.* 6—730
116. Bill May be Dismissed as to Unincorporated Labor Union, etc., and Stand as to Remaining Individual Defendants.—A bill in the Federal circuit court to enjoin the interference with an employer's business may be dismissed as to a voluntary unincorporated labor union and its members generally, for want of jurisdiction of them, and stand as to the remaining individual defendants. *Irving v. Joint Council of Carpenters, etc.*, 180 F., 897. 5—379
117. Same—On Bill to Enjoin, Injunction is Properly Continued Pending the Action.—On a bill to enjoin interference with an employer, an injunction is properly continued pending the action, restraining individual defendants from calling out

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employees in other trades who have no grievances against their employers, and from notifying owners, builders, and architects and others that they are likely to have their operations suspended if they use complainant's products. *Ib.*

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118. Federal Conformity Statute Does Not Cover Instructing Jury.—The Federal conformity statute (Rev. St. sec. 914), providing for conforming the procedure in the Federal courts to that in the State courts in civil actions at law, does not cover instructing the jury. *Steers v. U. S.*, 192 F., 10. 4—440

119. When Federal Court Will Not Follow State.—Under the conformity statute (Rev. St., sec. 914), a Federal court will follow the practice prescribed by a State statute "as near as may be," but not where it would defeat or incumber the administration of the law under Federal statutes. *Buckeye Powder Co. v. Du Pont Powder Co.*, 196 F., 516. 4—563

120. Same—On Motion to Strike Out, Court Will Strike Out Matter Not Directly Challenged.—In disposing of a motion to strike out a declaration as so defective in form as to prejudice a fair trial of the cause, the court will notice and strike out objectionable parts, although not directly challenged, where necessary to a proper disposition of the motion. *Ib.*

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121. Same—On Motion to Strike Out, General References to Defendants Not Served, Will be Stricken Out.—In an action for damages under the Sherman Law, where a conspiracy is charged between a large number of persons and corporations named, only those who are served should be declared against as defendants, and the naming of all as defendants in the declaration, together with general references to the defendants, without specifically naming those referred to, constitutes a defect which will be corrected by the court on a motion to strike out the pleading. *Ib.*

4—569

122. Same—Declaration Held Sufficient, but Certain Allegations Stricken Out.—The declaration in an action under section 7 of the Sherman Law, to recover damages for the violation of sections 1 and 2 of the Law, construed, and held not subject to a motion to strike out for uncertainty and indefiniteness of statement, but certain allegations stricken out as irrelevant. *Ib.*

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123. Profert of Judgment Made by Answer—Effect of.—By the profert of the judgment in a cause in a State court, made by the answer pleading it as *res judicata*, the record of such cause becomes part of the pleading, so that the court may, and is bound to, inspect it as such; it not being required to be annexed as an exhibit to the answer, and testimony or affidavits not being necessary. *Straus v. American Pub. Assn.*, 201 F., 309.

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- 124. On Writ of Error from Dismissal of Complaint on Demurrer Thereto, Appellate Court Will Review All Questions raised by the Demurrer.**—On writ of error from a judgment dismissing an action on demurrer to the complaint, the appellate court is not limited to a consideration of the particular ground of demurrer sustained by the trial court, but all questions raised by the demurrer are reviewable. *Dowd v. United Mine Workers of America*, 235 F., 3. 6—652
- 125. Where There Is Identity of Parties and of Subject Matter, Indictments Charging Violations of Different Laws, May Be Consolidated and Tried Together.**—Defendants were charged with a conspiracy to do acts in restraint of trade, in violation of the Sherman Law, and also with a conspiracy, under section 37 of the Criminal Code, to violate section 13 thereof, declaring that whoever, within the territory or jurisdiction of the United States, begins or sets on foot, or provides or prepares the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state or people with whom the United States are at peace, shall be punished. The indictment under the Sherman Law charged no overt act, but charged that the conspiracy was entered into within the district, while the indictment under section 37 charged the commission of an overt act within the district, although the contemplated activities would take a wide range. Both conspiracies were directed against the munitions trade of the United States with France, Russia, England, and Japan, and defendants' purpose was to prevent the shipment or transportation of munitions of war to such countries, either by destroying munition plants in the United States or destroying ships and railroads outside of the United States engaged in carrying munitions. *Held*, that, as there was an identity of parties and of subject matter and both conspiracies were entered into in the same district, though defendants were indicted under the Sherman Law for their conspiracy against munition plants in the United States, the indictments should be consolidated and tried together for convenience. *U. S. v. Bopp*, 237 F., 284. 6—707
- 126. Counsel Compelling, Under Subpoena, Production of Document, Can Not Inspect Until Court Has Held It to Be Admissible.**—Where a witness produces documents under subpoena, each document so produced goes direct to the court and will not be seen by the counsel compelling its production, unless and until the court has held it to be admissible. *Great Eastern Clay Products Co.*, (not reported). 6—1042

POWDER. See COMBINATIONS, 101.

POWER.

- 1. Of Courts—Distinction Between Power to Grant Relief for Failure to Construct, and to Prevent Elimination of an Existing,**

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Competing Railroad.—There is a clear distinction between the power to grant relief respecting the past failure to construct one of two projected parallel lines of railroad and the power to prevent the elimination of one of two parallel roads in actual existence and operation. *U. S. v. L. S. & M. S. Ry. Co. et al.*, 203 F., 317. 5—273

2. Congress Has Not the Power to Compel a Person to Sell His Goods to a Particular Customer.—Congress is without constitutional power to authorize the courts by injunction to compel a person, selling goods in interstate commerce, and affected by no public duty, to sell his goods to a particular customer. *Great Atl. & Pac. Tea Co. v. Cream of Wheat Co.*, 224 F., 574. 5—872

PRELIMINARY INJUNCTIONS. See INJUNCTIONS, 8, 38, 41, 44.

PREPAYMENT OF FREIGHT. See CARRIERS.

PRICE RESTRICTIONS.

1. Patentee May Not by Notice, Limit Resale Price of Patented Article.—A patentee may not by notice limit the price at which future retail sales of the patented article may be made, such article being in the hands of a retailer by purchase from a jobber who has paid to the agent of the patentee the full price asked for the article sold. *Henry v. Dick Co.*, 224 U. S., 1, distinguished; *Bauer & Cie v. O'Donnell*, 229 U. S., 1. 6—804

2. Same—Exclusive Right to Vend, Does Not Include Right to Control Resale Price of Article.—The exclusive right to "make, use, and vend the invention or discovery," granted by section 4884, Revised Statute, to the patentee, his heirs and assigns, does not include the right to limit by notice the price at which the patented article may be resold at retail by a purchaser from jobbers who have paid to the patentee's agent the full price asked. *Ib.*, 57 L. Ed., 1041. 6—804

3. Resale Price of Patented Article Can Not Be Controlled by.—The monopoly of use granted by the patent law can not be made a means of controlling the prices of the patented articles after they have been, in reality even though not in form, sold and paid for. *Straus v. Victor Talking Machine Co.*, 243 U. S., 501. 6—820

4. Same—When Such Restrictions, by Means of "License Notices," Are Void.—In such case, as to purchasers not in privity with the patent owner, the restrictions of the "license notices" are to be treated as void attempts to control prices after sale, and in buying from the dealers and reselling to the public at prices lower than the notices prescribe such purchasers do not violate the rights secured to the patent owner by the patent law. *Ib.* 6—820

5. For the Purpose of Evading Sherman Law, Void.—If a license restriction imposed by the owner of a patent is not for the

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purpose of protecting the patent or for securing its benefits, but for the purpose of evading the Sherman Law, it is void. *Ingersoll & Bro. v. McColl*, 204 F., 149. 5—161

6. **Same—Certain Restrictions on Sale of Watches Held Not to Apply to Purchaser Having No Contract Relations with Manufacturer.**—Complainants make and sell, under different trade names, watches containing parts which are patented. Each watch is placed in a box, and on some of the boxes is printed a notice or so-called license restriction, by which complainants attempt to control the price at which the watch may be sold by jobbers and retailers under penalty of being charged with infringement of the patents. Others of the watches, sold under different trade names, but having the same mechanism and containing the same patented parts, are sold without any restriction. *Held*, that such restrictions were clearly not intended to protect the use of the patents or the monopoly which the law confers upon them, but for the protection of certain of the trade-marks, and that a purchaser who had no contract relations with complainants was not bound thereby. *Ib.* 5—167
7. **Where Patented Article Has Reached a Retail Dealer, the Manufacturer Can Not Enforce a Price Restriction Agreement, It Being Void Under the Statute and at Common Law.**—Where a patented article has passed into the channels of trade and reached a retail dealer, the manufacturing patentee is not entitled to enforce a price restriction agreement for the purpose of preventing competition as against such retailer; such restriction being void both at common law and under the Sherman Law. *Kellogg Toasted Corn Flake Co. v. Buck*, 208 F., 383. 5—849
8. **Manufacturer Can Not Control Price at Which an Article Shall Be Resold at Retail.**—A manufacturer can not, without violating the Sherman Law, in connection with an absolute sale of its product (though with the patented cartons containing it) to a jobber, control the price at which the package shall be resold by the jobber, or by the retailers who buy from the jobber. *U. S. v. Kellogg Toasted Corn Flake Co.*, 222 F., 728. 5—854
9. **Same—Restraint and Monopoly Being Actually Effected by, Not Necessary That Contract Be Valid, to Violate the Sherman Law.**—Restraint and monopoly being actually effected by price restrictions on resales, imposed by a manufacturer in the absolute sale of its product, it is not necessary that they constitute a valid contract, to be violative of the Sherman Law. *Ib.* 5—857
10. **Owner of Patented Machine, upon Sale, Can Not Fix Resale Price to Purchaser.**—Where the owner of a patent sells a machine made by him thereunder, and receives therefor the

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full price asked, and all that he expects to receive, he has fully exercised the exclusive right to sell given him by the patent laws, so far as relates to the particular machine sold, and can not legally fix the price at which it may be resold by the purchaser. *Ford Motor Co. v. Union Motor Sales Co.*, 225 F., 375. 6—185

11. **Same—Attempt by Manufacturer to Compel, by Contract, Dealer to Resell at Fixed Price, Is in Restraint of Trade and Unenforceable.**—Complainant manufactures automobiles under its own patents, and sells the same to dealers, receiving therefor the prices it has fixed; but by contracts with such dealers it is provided that the machines will be resold by them at complainant's full advertised list prices only, and that a violation of such provision shall constitute an infringement of the patents, subject the dealer to the payment of a fixed sum as damages, and authorize a cancellation of the contract; also that title to the particular machine or machines so sold shall revert to complainant. There is a further provision reserving title in complainant until full payment of the purchase price. *Held*, that such a contract is one of sale of the machines, and not of the right to sell, that on full payment of the purchase price of a machine it passes beyond the patent monopoly, and that in so far as the contract attempts to fix the price at which only it may be sold thereafter it is illegal, as in restraint of trade and unenforceable. *Ib.* 6—189

12. **Agent or Vendee of Patentee May Bind Himself to an Observance of.**—An agent or vendee of a patentee may, by direct covenant, bind himself to the observance of price restriction imposed as a condition on which exclusive right of sale by the patentee is being exercised. *American Graphophone Co. v. Boston Store*, 225 F., 789. 6—844

13. **Same—Failure by Agent or Vendee to Observe, When Infringement of Patent.**—Whether a violation of a contract by an agent or vendee of a patentee to observe price restriction, imposed as a condition on which exclusive right of sale by patentee is being exercised, may be dealt with as for infringement or breach of contract, enforceable in equity, is immaterial as between the parties, except only as it may affect the jurisdiction of the court to be invoked; but, where the contract is to be taken as the measure of the agent or vendee's right, a failure to observe its stipulations is an infringement. *Ib.* 6—844

14. **There is nothing either in the Clayton Law or the Federal Trade Commission Law, validating price restrictions by a vendor on resale of property sold absolutely by him.** *Ford Motor Co. v. Union Motor Sales Co.*, 244 F., 160. 6—1018

See also RESELL PRICES.

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PRINCIPALS.

1. All Parties Active in a Misdemeanor Are.—All parties who are active in promoting a misdemeanor, whether agents or not, are indictable as principals. *U. S. v. Winslow*, 195 F., 581.

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2. Acts of Agents Are Acts of Principals.—The acts of agents and employees in furtherance of a conspiracy, are the acts of the principal. *Alaska S. S. Co. v Inter. Longshoremen's Assn.*, 236 F., 969.

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PRIVATE PARTY.

1. Can Not Maintain Suit to Restrain Unlawful Agreement, Under Law of New York, Unless It Affected Him Injuriouly, etc.—Though an agreement between certain carpenters' and woodworkers' unions to refuse to use building trim manufactured in non-union factories was in restraint of trade and constitutes a misdemeanor in violation of penal law of New York, article 54, section 580, sub-division 6, prohibiting a conspiracy to commit acts injurious to trade or commerce, a private individual was not entitled to a suit to restrain the enforcement of such agreement, in the absence of proof that it was aimed at or affected him injuriouly as distinguished from the general public. *Paine Lumber Co. v. Neal*, 212 F., 266.

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2. Not the Direct Object of Agreement, or Who Has Not Suffered Special Damages, Can Not Maintain Suit to Restrain Violation of the Sherman Law.—The carrying out of an agreement in violation of the Sherman Law, or otherwise in restraint of trade, will not be enjoined at the suit of a private party, not shown to have been the direct object of such agreement or to have suffered special damages. *Paine Lumber Co., v. Neal*, 214 F., 82.

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3. Can Not Obtain an Injunction Restraining Continuance of Violation of the Sherman Law.—A private person can not obtain an injunction restraining the continuance of an alleged conspiracy or combination in restraint of interstate commerce under the Sherman Law; the injunctive remedy covered by such act being available to the Government only, and the individual being only authorized to sue for and recover threefold damages. *Mitchell v. Hitchman Coal & Coke Co.*, 214 F., 713.

5—631

[But see Section 16 of the Clayton Law.]

4. Can Not Maintain an Action Under the Sherman Law, Unless He Can Show Special Damage to Himself, Arising from Its Violation.—A private individual may not maintain an action to enforce generally the provisions of the Sherman Law; but, in order to rely upon its provisions, an individual must base his cause of action upon its violation, and show a special damage to himself arising from such violation, not suffered

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by the general public. *Union Pacific Railroad Co. v. Frank*, 226 F., 909. 5—919

5. Can Not Maintain Suit for Injunction under Sherman Law.—

A private party can not maintain a suit for an injunction under section 4 of the Sherman Law. *Paine Lumber Co. v. Neal*, 244 U. S., 471. 6—963

PRIVY COUNCIL.

Decision of Judicial Committee of, Will Not Support Demurrer to

Indictment Charging a Monopoly.—The business of the United Shoe Machinery Company is conducted by a system of leases, which are substantially the same as those described in *United Shoe Machinery Company v. Brunet* (1909) App. Cas. 330. It is claimed in these indictments that the provisions of these leases are unreasonable, and unlawfully operate to build up the alleged monopoly of the United Shoe Machinery Company. It is claimed by the respondents that *United Shoe Machinery Company v. Brunet* should be applied here, and that in harmony therewith the leases in question here should be declared valid. *United Shoe Machinery Company v. Brunet* was decided by a very able court, yet it was a decision of the judicial committee of the Privy Council, and therefore not authoritative as the decisions of the established courts of Great Britain. Independently of these considerations, the pleadings in these indictments do not permit us to so apply on this demurrer *United Shoe Machinery Company v. Brunet* to such extent as to support the demurrer. *U. S. v. Winslow*, 195 F., 594. 5—194

PROCEDURE. See PLEADING AND PRACTICE.

PROCESS.

1. Power of Congress to Authorize Process of Federal Courts to

Run Outside Their Districts.—In a case at law or in equity which arises under the Constitution or laws of the United States—and a suit by the United States under the Sherman Law, presents such a case—Congress is authorized by article 3, sections 1, 2, of the Constitution, to confer upon any national court jurisdiction to summon the proper parties to the suit to a hearing and decree, wherever they reside or are found within the dominion of the Nation, although beyond the limits of the district of the court. *U. S. v. Standard Oil Co.*, 152 F., 293. 3—178

2. Jurisdiction to Bring in Non-resident Defendants.—Section 5 of

the Sherman Law confers upon any court of the United States in which a suit has been brought under it by the United States against a conspirator that is a resident of its district, jurisdiction to bring in non-resident co-conspirators by the service of its process upon them without its district.

Id.

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3. **How Made on Non-resident Corporation.**—Upon an indictment for conspiracy in restraint of trade under Sherman Law, the court has power, by virtue of Revised Statutes, section 716, which authorizes such courts to issue all writs "necessary for the exercise of their respective jurisdictions," to issue process to another State to bring before it corporation defendants who are citizens of such State and can not be found or served in the State or district of the indictment. *F.*, 944. 3—264
- (But see *Carpenter v. Winn*, 221 U. S., 533.)
4. **Production of Books and Writings.**—In a proper case a party may be required to produce books and writings under Revised Statutes, section 724, in advance of trial, but such a direction should only be made when the situation is clearly such that in no other way can the ends of justice be properly subserved. *American Banana Co. v. United Fruit Co.*, 153 *F.*, 944. 3—264
- (But see *Carpenter v. Winn*, 221 U. S., 533.)
5. **Requiring Production of Documents—Corporations.**—An action to recover treble damages under the Sherman Law is penal in character, but such fact does not preclude the court from requiring the defendant, when a corporation, to produce books or writings under Revised Statutes, section 724. *Ib.* 3—264
6. **Sufficiency of Application.**—A petition for a subpoena duces tecum is sufficiently definite with respect to the books or documents required, where the description is specific enough to enable the witness to produce them without uncertainty. *U. S. v. Terminal R. Assn.*, 154 *F.*, 268. 3—266
7. **Same.**—To entitle a party to a subpoena duces tecum requiring a witness not a party to the action to produce books and documents in his possession it is not sufficient to allege merely that the documents are material and relevant to the issues in the case, but the facts that will enable the court to determine that they are prima facie material and relevant must be set out. *Ib.* 3—266
8. **Subpoena duces tecum—Refusal to Obey.**—A witness can not excuse his failure to produce books and papers in obedience to a subpoena duces tecum on the ground that the evidence called for is immaterial, irrelevant, or incompetent under the issues in the case, that question being one for the court to determine when the evidence is offered. *U. S. v. Terminal R. Assn., etc.*, 148 *F.*, 488. 3—38
9. **Same—Grounds for Issuance.**—To entitle a party to a subpoena duces tecum to require a witness to produce books and papers it is not necessary that the court should be satisfied beyond a reasonable doubt of their relevancy and materiality as evidence, but a showing which establishes a reasonable ground to believe they may be so is sufficient,

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especially where the application is made by the United States in a suit of public interest and importance. *Ib.* 3—39

10. Same—Unreasonable Searches and Seizures.—The fourth constitutional amendment, prohibiting unreasonable searches and seizures, affords no protection to a witness for his refusal to produce books and papers admittedly in his possession in obedience to a subpoena duces tecum issued by a court of equity. *Ib.* 3—40

11. In Suit Under Sherman Law, Service of on Texas Executrix, While Sojourning in New York, Not Authorized by Code of New York.—In an action at law under section 7 of the Sherman Law, brought against the executrix of decedents jointly charged with the wrongful acts resulting in damage to plaintiff, service of summons on the executrix, a resident of Texas and appointed by the proper court of Texas, which was the residence and citizenship of the decedents, made while she was sojourning in New York, is not authorized by the Code of Civil Procedure, New York, section 1836a, authorizing a foreign executor to be sued in like manner and under like restrictions as a non-resident may be sued. *Thorburn v. Gates*, 225 F., 617. 6—202

PRODUCTION OF DOCUMENTS.

1. Court Will Not Compel, in Suit Between Private Parties, Officer of Government to Produce.—A Federal court will not entertain process, in a suit between private parties, to compel the production before an examiner, by an officer of an executive department of the Government, of papers coming into his possession as such officer in the discharge of his official duties. *Great Eastern Clay Products Co.* (not reported). 6—1042

2. Same—Counsel Compelling, Under Subpoena, Can Not Inspect Until Court Has Held It to Be Admissible.—Where a witness produces documents under subpoena, each document so produced goes direct to the court and will not be seen by the counsel compelling its production, unless and until the court has held it to be admissible. *Ib.* 6—1042

See also CORPORATIONS, 12—15, 17, 18, 20—23; WITNESSES, 8, 16, 20, 25, 26, 28, 29; SEARCH, 1—4, 6.

PROFIT AND LOSS. See DAMAGES, 3, 5.

PROPERTY.

Conduct of in Public Service, Subject to the Law.—The conduct of property embarked in the public service is subject to the policies of the law. *Thomsen v. Cayser*, 243 U. S., 87. 6—729

PROOF.

1. On Motion for Preliminary Injunction, Only Necessary to Show Cause of Action and Irreparable Damage, etc., Unless Protected.—On motion for a preliminary injunction, it is only necessary to show that a cause of action exists, and that irreparable injury will be done complainants, unless they are

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- protected. *Irving v. Joint Council of Carpenters, etc.*, 180 F., 900. 5—383
2. **Profert of Judgment Made by Answer—Duty of Court to Inspect.**—By the profert of the judgment in a cause in a State court, made by the answer pleading it as *res judicata*, the record of such cause becomes part of the pleading, so that the court may, and is bound to, inspect it as such; it not being required to be annexed as an exhibit to the answer, and testimony or affidavits not being necessary. *Straus v. American Pub. Assn.*, 201 F., 309. 4—840
3. **Conspiracies Seldom Capable of, by Direct Testimony.**—Conspiracies are seldom capable of proof by direct testimony and a conspiracy to accomplish that which is their natural consequence may be inferred from the things actually done. *Eastern States Ret. Lum. Deal. Assn. v. U. S.*, 234 U. S., 612. 4—873
4. **To Recover Damages Under Sherman Law, Plaintiff Must Prove Actual Damages, Not Speculative or Uncertain Damages.**—To recover damages under section 7 of the Sherman Law, plaintiffs must show that as a result of defendant's acts actual damages susceptible of expression in figures were sustained, and they must not be speculative, remote, or uncertain. *American Sea Green Slate Co. v. O'Halloran*, 229 F., 79. 5—308
5. **Same—Damages Must Be Proved by Facts, Not by Conjectures.**—In an action for damages under section 7 of the Sherman Law, the damages must be proved by facts from which their existence is logically and legally inferable, and not by conjectures or estimates. *Ib.* 5—308
6. **Not Necessary to Prove Use of Every Means Alleged in Indictment in Order to Convict.**—Where the indictment under the Sherman Law alleges numerous methods employed by the defendants to accomplish the purpose to restrain trade, it is not necessary, in order to convict, to prove every means alleged, but it is error to charge that a verdict may be permitted on any one of them when some of them would not warrant a finding of conspiracy. *Nash v. U. S.*, 229 U. S., 380. 5—241

PROPRIETARY PATENT MEDICINES. See COMBINATIONS, ETC.

PUBLIC POLICY.

1. **Public Policy—How Determined.**—The public policy of the Nation must be determined from its Constitution, laws, and judicial decisions. *U. S. v. Trans-Mo. Ft. Assn.*, 58 F., 69. 1—200

Case reversed, 166 U. S., 290 (1—648).

2. **Same—Interstate Commerce.**—The act of February 4, 1887, entitled "An act to regulate commerce," demonstrates the fact that from the date of the passage of that act it has been

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the public policy of this Nation to regulate that part of interstate commerce which consists of transportation, and to so far restrict competition in freight and passenger rates between railroad companies engaged therein as shall be necessary to make such rates open, public, reasonable, uniform, and steady, and to prevent discriminations and undue preferences. *Ib.* 1—200

3. **Contracts—Public Policy.**—Freedom of contract is as essential to unrestricted commerce as freedom of competition, and one who asks the court to put restrictions upon the right to contract ought to make it clearly appear that the contract assailed is against public policy. *Ib.* 1—213

See ACTIONS AND DEFENSES, 155; COMBINATIONS, 178, 306.

PUBLISHERS. See COMBINATIONS, ETC., 86, 182, 183.

PURCHASE AND SALE. See SALE, 4.

RAILROADS.

1. **Not Prohibited by the Commodities Clause of the Hepburn Law from Carrying Coal from Its Own Mines, After Coal Has passed Into the Ownership of a Coal Company.**—Under the decisions of the Supreme Court construing the Commodities Clause of the Hepburn Law (34 Stat., 584), and holding that it does not prohibit a railroad company from transporting in interstate commerce commodities manufactured, mined, produced, or owned at the time of shipment by a distinct bona fide corporation, merely because of the company's ownership of stock in such corporation, irrespective of the extent of such stock ownership, a railroad company, owning and holding as lessee at the time of the passage of the act, a large quantity of coal lands and extensive mines and storage and sales equipment throughout the country, which after such decisions, in good faith, organized a separate coal company to lease its outside equipment and buy the product of its mines at the breakers, in which operation it owns no stock, but sold the greater part to its own stockholders, by whom much of it was afterwards sold to third persons, is not prohibited from carrying the coal from its mines after it has passed into the ownership of the coal company. *U. S. v. D., L. & W. R. Co.*, 213 F., 251. 6—245
2. **Same—A Contract by Which a Coal Company Agreed to Buy at the Mines of Railroad Company, All Coal Mined by It, Does Not Leave the Railroad Company "Any Interest, direct or indirect," in the Coal, Which Renders Its Transportation Unlawful Under the Commodity Clause.**—A contract between the two companies, by which the coal company agreed to buy f o. b. at the mines all of the coal mined or purchased by the railroad company which it desired to sell, and to pay for certain grades thereof a stated per cent, of the general average f. o. b. prices of such coal at tidewater points, does

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not leave the railroad company with "any interest, direct or indirect," in the coal, after its delivery to the coal company, which renders its transportation unlawful under the statute, where all shipments are made pursuant to orders of the coal company, and the latter also has full control over the prices at which it sells. *Ib.* 6—257

3. **Bill to Restrain Consolidation of, Under State Laws, Held Insufficient as Failing to Show Restraint of Exclusively Intra-state Transportation.**—A bill does not state a cause of action for an injunction to restrain the consolidation of two railroad companies as being in violation of the anti-trust laws of certain States, where it alleges no facts showing any restraint upon transportation exclusively in any one of such States. *DeKoven v. L. S. & M. S. Ry. Co.*, 216 F., 956. 5—472
4. **Plan of Consolidation of Two, One of Which Owned Majority of Stock of the Other, Held Not So Unfair As to Justify Granting of Injunction.**—The plan of consolidation of two railroad companies proposed by one, which owned a majority of the stock of the other, *held* on its face and on the showing made not so clearly unfair or inequitable to the minority stockholders of the latter as to justify the granting of a preliminary injunction restraining the consolidation; their objection being only to the amount of stock to be allotted to them in the consolidated company. *Ib.* 5—478
5. **Minority Stockholders of, in Private Litigation, Have No Right to Enforce the Sherman Law.**—Minority stockholders of a railroad company in private litigation have no right to enforce the Sherman Law to set aside a prior lease of the assets of one company to another, but may invoke the law to prevent a subsequent consolidation prejudicial to their rights and involving a breach of contract. *Boyd v. N. Y. & H. R. R. Co.*, 220 F., 180. 5—519
6. **Same—Right to Consolidate Is Merely Permissive, and May Contract Against That Right.**—The right of railroads to consolidate, given by a State statute, is merely permissive, and hence it is no violation of the statute for a railroad to contract against the exercise thereof. *Ib.* 5—520
7. **Same—Railroad Controlling Another Corporation by Means of Stock Ownership, and Lease, Is Trustee for Minority Stockholders.**—Where a railroad corporation controlled another corporation by its ownership of a majority of the stock, and also by a lease of its property, it was a trustee of such property for the minority stockholders. *Ib.* 5—520
8. **Same—When Minority Stockholders of, May Enjoin Dissolving of Contract Rights by Means of a Consolidation.**—Where, under existing leases and contracts, the dividends or annual returns on stock of the H. Company, a majority of which was owned by the C. Company, which was operating the H.

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Company's railroad under a lease, must be paid before the C. Company's stockholders could obtain anything, and, if this was not done, the system by which the C. Company obtained access to its terminal station in New York City would be disastrously affected, and the H. Company's shares were worth by reason of such guaranty, many times what the shares of the C. Company were worth, the minority shareholders of the H. Company were entitled to enjoin the C. Company from dissolving such rights by a consolidation. *Ib.* 5—521

9. **The Fact That a Lease of a Railroad Created a Unity of Competing Roads, Antedated the Sherman Law, Did Not Render That Statute Inapplicable.**—If a railroad lease created a control or unity of competing interests forbidden by the Sherman Law, the fact that it long antedated the statute did not render the act inapplicable. *Ib.* 5—519
10. **Can Not Be Charged with Breach of Duty Because of Expenditures Made for Improving Controlled Line, etc.**—A railroad company, which through stock ownership controls another company, owning and operating a connecting line, can not be charged with a breach of duty toward minority stockholders because of expenditures made in reconstructing and improving the line of the controlled company, although such expenditures inured to its benefit, where they were made by the directors of the controlled company in good faith, and proved, as expected, of large benefit to that company as well, by reason of largely increased traffic through the connection, to obtain which they were necessary. *Union Pacific Railroad Co. v. Frank*, 226 F., 911. 5—923
11. **Same—Can Not Sell to a Controlled Company a Line Built by Itself, for Its Own Benefit, etc.**—A railroad company, which through stock ownership controls another company, stands in a fiduciary relationship to the minority stockholders, and can not lawfully sell to the controlled company a line of road built and owned by itself, the chief purpose of which is to benefit its own business, and not that of the controlled company. *Ib.* 5—934
12. **Same—The Mere Fact a Company Has Earned Net Profits Does Not Entitle Stockholders to Dividends, Regardless of Needs of the Company in the Way of Improvements.**—The mere fact that a railroad company has earned net profits in a designated year does not entitle preferred stockholders to dividends therefrom, regardless of the needs of the company in the way of maintenance and betterments, to enable it to properly perform its duty to the public. *Ib.* 5—936
13. **May Give Exclusive Privilege to Some Hackmen and Baggage-men to Enter Station, and Exclude All Others.**—Under the rule of the Federal courts, a railroad and depot company

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may lawfully exclude some hackmen or carriers of baggage from entering its grounds or station for the purpose of soliciting patronage and plying their vocation, while it gives to others the exclusive privilege of doing so. *Skaggs v. Kansas City Term. Ry. Co.*, 233 F., 828. 6—535

14. **Lease of One Railroad to Another Whose Lines Had Been Constructed As One System, Not a Violation of the Sherman Law.**—Where the relation of lessor and lessee between two railroad corporations, whose lines had been originally constructed as part of the same general system and continuously operated under one management, was reversed in 1885 by the surrender of the leases and a lease of the lines belonging to the former lessee to the former lessor, and that lease was superseded by a new lease in 1893 for the balance of the term of the lease of 1885, the new lease making only immaterial changes in the former lease, neither of those transactions affected the exemption from the operation of the Sherman Law, of the proprietary relations existing prior to the passage of that law. *U. S. v. Southern Pacific Co.*, 239 F., 1001. 6—849
15. **Same—That Lease Was Not Authorized by State Statute Does Not Render It Subject to Sherman Law.**—That a lease of railroad lines was not authorized by State statutes does not render it subject to the Sherman Law, since that act deals with actual conditions affecting interstate commerce, whether they are authorized by State statute or not. *Ib.* 6—849
16. **Same—Where There Never Has Been Competition Between Two Railroads Subject to Common Control, Sherman Law Does Not Apply.**—Where there had been, since 1870, a continuous common control of the railroads owned by two corporations, effected by leases and unquestioned by the State, so that there never had been from the time of their construction any existing competition between them, and the lessee in 1899 purchased the stock of the lessor company, the Sherman Law does not apply, though two of the lines would be competing if the relationship were dissolved, since that act was not intended to create competition that had never before existed by destroying a proprietary relationship existing at the time of its passage. *Ib.* 6—849
17. **Lease of Lines of Central Pacific by Southern Pacific Not a Violation of Pacific Railroad Acts.**—The Pacific Railroad Acts (act July 1, 1862, c. 120, 12 Stat. 489; act July 2, 1864, c. 216, 13 Stat. 356; act June 20, 1874, c. 331, 18 Stat. 111), requiring the Central Pacific Railroad to maintain physical connection with the Union Pacific, to make a through line and to furnish equal advantages and facilities as to rates, time, and transportation, were not violated by the lease of the lines of the Central Pacific to the Southern Pacific, and the subse-

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quent purchase by the latter of the stock of the former, so long as the statutory requirements were observed. *Ib.* 6—857

- 18. Constructed Under Acts of Congress—Obligation to Keep Faith with Government Under Changed Ownership.**—The obligation to keep faith with the Government in regard to management of railroads constructed under acts of Congress continue notwithstanding changed forms of ownership and organization, as does also continue the legislative power of Congress concerning such railroads. *U. S. v. Union Pacific R. R. Co.*, 226 U. S., 92. 4—681

See also COMBINATIONS, ETC., 188–192, 344–363.

RAILROAD EMPLOYEES. *See* COMBINATIONS, ETC., 593, 236–252.

RATES. *See* RAILROADS.

REASONABLE DOUBT. *See* JURY, 1.

REASONABLENESS OR UNREASONABLENESS. *See* COMBINATIONS, ETC., 21, 27, 48, 118, 129, 133, 160, 162, 317, 318; STATUTES, 12, 13, 23, 26, 39.

REBATES. *See* ACTIONS, 93; COMBINATIONS, ETC., 315, 316; DAMAGES, 18; INDICTMENTS, 3, 4.

RECEIVERS.

- 1. Suit by Chancery Receiver—Where to be Brought.**—A mere chancery receiver, having no title to the assets or to the claim sued on, can not maintain an action in the Federal courts in a jurisdiction other than that in which he was appointed. *Strout v. United Shoe Mach. Co.*, 195 F., 319. 4—535

- 2. Of Corporation—When May Sue in Foreign Jurisdiction.**—A receiver of a corporation who is a successor in title of the corporation may sue in a foreign jurisdiction. *Ib.* 4—538

See also COURTS, 7; CONTEMPT, 1, 2, 9; COMBINATIONS, ETC., 238, 241.

RECOVERY. *See* ACTIONS AND DEFENSES, 42, 44, 45, 47, 72, 73, 75, 138.

REMEDIES.

- 1. Suit by Private Individual Must Be at Law.**—The Sherman Law confers no right upon a private individual to sue in equity for the restraint of the acts forbidden by such statute, an action at law for damages being the only remedy provided for private persons, and the right to bring suits in equity being vested in the district attorneys of the United States. *Pidcock v. Harrington*, 64 F., 821. 1—377

[But *see* Sec. 16 of the Clayton Law.]

- 2. When Private Party Entitled to Injunctive Relief.**—A private party who has sustained special injury by a violation of the Sherman Law may sue in a Federal court for injunction under the general equity jurisdiction of the court, where, by reason of diversity of citizenship of the parties, the court has jurisdiction of the suit. *Bigelow v. Calumet & Hecla Mining Co.*, 155 F., 877. 3—305

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3. **Same—Suit by Stockholders to Restrain Competing Corporation from Voting Stock.**—A stockholder of a corporation may sue in a Federal court to restrain another corporation which has obtained control of a majority of its stock from voting the same for the purpose of electing its own directors and eliminating competition between the two companies in alleged violation of law and to the irreparable injury of complainant as a stockholder, although the bill does not show a formal demand upon the directors to bring the suit as provided by equity rule 94, even conceding that the right of action is in fact that of the corporation, where the allegations *prima facie* negative collusion and fairly show that such demand would have been unavailing. *Ib.* 3—308
4. **Reasonableness of Rates.**—Where an interstate carrier charged plaintiff the regular posted tariff rates, plaintiff could not maintain an action at law either under the Sherman Law or the interstate commerce law for a readjustment of such rates on the ground that the same were unreasonable or unlawful, its remedy being by application to the Interstate Commerce Commission to have the schedule of tariffs adjusted on a reasonable and lawful basis. *American Union Coal Co. v. Penna. R. R. Co.*, 159 F., 279. 3—314
5. **No Right of Action for Excessive Rates—Remedy.**—The Sherman Law does not give any right of action for damages sustained by the payment of excessive, unjust, or unreasonable rates to interstate carriers, such relief being provided for by the interstate commerce act. *Meeker v. Lehigh Valley R. R. Co.*, 162 F., 357. 3—394
6. **The remedy to be administered in case of a combination violating the Sherman Law is twofold:** First, to forbid the continuance of the prohibited act, and second, to so dissolve the combination as to neutralize the force of the unlawful power. *Standard Oil Co. v. U. S.*, 221 U. S., 78. 4—145
7. **Same.**—In determining the remedy against an unlawful combination, the court must consider the result and not inflict serious injury on the public by causing a cessation of interstate commerce in a necessary commodity. *Ib.* 4—148
8. **Where a case is remanded, as this one is, to the lower court with directions to grant the relief in a different manner from that decreed by it, the proper course is not to modify and affirm, but to reverse and remand, with directions to enter a decree in conformity with the opinion and to carry out the directions of this court, with costs to defendants.** *U. S. v. American Tobacco Co.*, 221 U. S., 188. 4—241
9. **Same.**—In giving relief against an unlawful combination, under the Sherman Law the court should give complete and efficacious effect to the prohibitions of the statute, accomplish this result with as little injury as possible to the interest of the

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- general public, and have a proper regard for the vested property interests innocently acquired. *Ib.* 4—240
10. Same.—Pending the achievement of the result decreed all parties to the combination in this case should be restrained and enjoined from enlarging the power of the combination by any means or device whatever. *Ib.* 4—241
11. Duty of Court Not Only to Restrain, But to Dissolve Combination.—Where an existing combination in corporate form has been adjudged unlawful, as in violation of the Sherman Law, and to have monopolized and to be monopolizing a large part of the interstate trade in a particular commodity, it is the duty of the court, under the power conferred by section 4 of the act to "prevent and restrain" its violation, not only to enjoin further violation of the act, but to render its decree effective by dissolving the illegal combination. *U. S. v. du Pont, etc., Co.*, 188 F., 153. 4—377
12. Suit to Enjoin Violation Will Not Be Postponed Pending Criminal Prosecution.—Unless in an exceptional case a Federal court of equity will not postpone the hearing and decision of a suit brought by the United States under the Sherman Law to enjoin violation of the act to await the determination of a criminal prosecution against some of the same defendants based on the same alleged violations. *U. S. v. Standard Sanitary Mfg. Co.*, 191 F., 193. 4—425
13. The Sherman Law prohibiting a monopoly provides its own penalties for the violations of its provisions and does not deprive the offender of redress for a civil injury. *N. W. Consol. Milling Co. v. Callam & Son*, 177 F., 788. 3—763
14. Liability to Private Citizen.—By violating a criminal or penal statute one does not render himself liable to a private citizen unless the unlawful conduct is the proximate cause of, or results in, some special injury to such citizen's business or property. *Ware-Kramer Tobacco Co. v. American Tobacco Co.*, 180 F., 165. 3—786
15. Joint Wrong-Doers—Satisfaction.—Where two parties are jointly responsible to a third party for one wrong, while the wronged party may sue either or both, and recover judgments against either or both, he can have but one satisfaction for the same wrong. *Clabaugh v. Southern Wholesale Grocers' Assn.*, 181 F., 706. 3—814
16. Jurisdiction—When Not Impaired.—The fact that the Sherman Law makes a conspiracy in restraint of trade a crime, and provides a penalty therefor, does not necessarily impair the ordinary jurisdiction of equity, where the criminal acts work irreparable injury to property. The statute does not substitute its remedy for others which existed before its enactment. *Leonard v. Abner-Drury Brewing Co.*, 25 App. (D. C.) Cases, 161. 3—17

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17. **Same—Quære.**—Whether if the wrongs complained of by an individual growing out of alleged acts in restraint of trade in the District of Columbia, as distinguished from acts relating to conspiracies in restraint of interstate commerce, should be remediless save by a resort to the Sherman Law, any party other than the United States can invoke the jurisdiction of equity to restrain their commission. *Ib.* 3—17
18. **New Trial Only Remedy for Admission of Incompetent Evidence.**—Where a plaintiff's claim for damages for a tort was submitted to the jury on incompetent evidence as to certain of the items claimed, and a verdict was returned for plaintiff for less than the total amount claimed, the error can not be rectified by requiring a remittitur of the amount of the items so erroneously submitted, since the court can not know whether, or to what extent, such items entered into the verdict, and the only remedy is by the granting of a new trial. *Jayne v. Loder*, 149 F., 23. 3—68
19. **Voluntary Associations—Suspension of Members.**—Where a member of a voluntary association has been suspended by the directors for non-payment of a fine for violation of the by-laws, his action to be restored to the privileges of membership is founded upon the contract between himself and the association, which he must either accept in its entirety or repudiate. He does not occupy the position of a stranger injured by the acts of co-trespassers. *Greer, Mills & Co. v. Stoller*, 77 F., 1. 1—620
20. **Patentee May Elect Upon Which He Will Rely.**—A patentee may elect to sue his licensee upon the broken contract, or for forfeiture for breach, or for infringement. *Henry v. A. B. Dick Co.*, 224 U. S., 14. 6—744
21. **When Patentee may elect Which Remedy He Will Employ.**—A patentee selling a Rotary mimeograph under a license restriction that it shall be used only with stencil paper, ink, and other supplies made by the patentee, may elect to sue for an infringement by the sale of ink to the purchaser with the expectation that it would be used in connection with such mimeograph, although he might have sued on the broken contract, or brought a bill to declare a forfeiture of the licensee's rights for breach of the implied covenant to operate it only in connection with the materials supplied by the patentee. *Ib.* 56 L. Ed., 645. 6—744
22. **Purposes of the Sherman Law.**—One of the fundamental purposes of the Sherman Law is to protect, and not to destroy, the rights of property; and, in applying the remedy, injury to the public by the prevention of the restraint is the foundation of the prohibitions of the statute. (*Standard Oil Case*,

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221 U. S., 1, 78). *U. S. v. Terminal R. R. Ass'n*, 224 U. S., 409. 4—497

23. A combination of terminal facilities, which is an illegal restraint of trade by reason of the exclusion of non-proprietary companies, may be modified by the court by permitting such non-proprieters to avail of the facilities on equal terms. *Ib.* 4—499
24. Where the illegality of the combination grows out of administrative conditions which may be eliminated, an inhibition of the obnoxious practices may vindicate the statute, and where public advantages of a unified system can be preserved, that method may be adopted by the court. *Ib.* 4—499
25. In this case the objects of the Sherman Law are best attained by a decree directing the defendants to reorganize the contracts unifying the terminal facilities of St. Louis under their control so as to permit the proper and equal use thereof by non-proprietary companies, and abolishing the obnoxious practices in regard to transportation of merchandise. *Ib.* 4—499
26. Unless defendants, whose combination has been declared illegal by reason of administrative abuse, modify it to the satisfaction of the court so as to eliminate such abuse in the future, the court will direct a complete disjoinder of the elements of the combination and enjoin the defendants from exercising any joint control thereover. *Ib.* 4—500
27. Adequate relief from a combination of terminal facilities which offends against the provisions of section 1 and 2 of the Sherman Law, because it places such facilities under the exclusive ownership and control of less than all the railroad companies under compulsion, from the peculiar local topographical conditions, to use them, will be afforded by a decree requiring the reorganization of the combination so that it will act as the impartial agent of every railway line which must use the terminal instrumentalities. *Ib.* 56 L. Ed., 810. 4—499
28. Relief Against Violation of the Commodities Clause of the Hepburn Law.—Any relief against a continuance of the transportation by a railroad company of carrier owned coal, under the Commodities Clause of the Hepburn Law, must be sought in a proceeding based upon that act and can not be obtained in a suit for injunction under the Sherman Law. *U. S. v. Reading Co.*, 226 U. S., 342. 4—712
29. Writ of Prohibition Proper, to Prevent District Judge from Entering, Without Authority, Decree.—The district judge having refused to organize a court under the Expedition Act to determine the form of decree to be entered under the mandate of the Supreme Court, the latter court will issue its writ of

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- prohibition directed to the District Judge against entering a decree. *Ex parte, U. S., Petitioner*, 226 U. S., 425. 4—511
30. **Right of Action for Damages Under Sherman Law Is a Civil Remedy.**—The remedy given by the Sherman Law, authorizing an action for threefold damages, sustained by any person injured in consequence of any act forbidden or declared to be unlawful by the act, is a civil remedy for private injury, compensatory in its purpose and effect, and the threefold damages recoverable are exemplary damages. *Strout v. United Shoe Mach. Co.*, 195 F., 317. 4—532
31. **Courts Can Restrain Railroads Constructed Under Acts of Congress from Discriminating Against Each Other in Interchange of Traffic.**—Doubtless courts could restrain one railroad constructed under the acts of July 1, 1862, and July 2, 1864, from making discriminations, contrary to the provisions of those acts in regard to interchange of traffic, against another railroad also constructed under those acts. *U. S. v. Union Pacific R. R. Co.*, 226 U. S., 92. 4—681
32. **In Dissolving Combination, What Court Will Provide Against In Requiring Disposition of Stock in Competing Company.**—The Federal district court, in relieving against a combination in restraint of interstate trade, created contrary to the Sherman Law, by the acquisition by the Union Pacific and Central Pacific lines of a dominant stock interest in the Southern Pacific Company, a competing railway system, should, by its decree, provide against the right to vote such stock while in the ownership or control of the Union Pacific Railroad Company, or any corporation owned by it, or while held for it by any corporation or person, and forbid any transfer or disposition thereof in such wise as to continue its control, and should enjoin the payment of dividends on the stock while so held, except to a receiver appointed by the court to collect and hold such dividends until disposed of by its decree. 57 L. Ed., 124. 4—685
33. **Same.—Plan for Disposition of Shares to Be Approved by Court.**—Any plan for the disposition of the shares of stock of the Southern Pacific Company found by the Federal Supreme Court to have been acquired by the Union Pacific Railroad Company, contrary to the Sherman Law, prohibiting combinations in the restraint of interstate trade, must be such as effectively to dissolve the unlawful combination, and must be subject to the approval and decree of the district court, which shall proceed, upon the presentation of any plan, to hear the Government and the defendants, and may bring in any additional parties whose presence may be necessary to a final disposition of the stock in conformity to the views of the Supreme Court. *Ib.* 4—685

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34. **Each Case Must Stand Upon Its Own Facts, in Framing Decree.**—Each case under the Sherman Law must stand upon its own facts and this court will not regard the methods provided in decrees of other cases as precedents necessarily to be followed where a different situation is presented for consideration. *U. S. v. Union Pacific R. R. Co.*, 226 U. S., 474. 4—691
35. **Same—Majority of Governing Boards of Competing Railroads Should Not Consist of Same Persons.**—The ultimate determination of the affairs of a corporation rests with its stockholders and arises from their power to choose the governing board of directors; and the Supreme Court will not approve a method of distributing stock of a railroad company held by a competitor so that the natural result will be that a majority of the governing boards of both roads shall consist of the same persons. *Ib.* 4—692
36. **Same—Proposed Plan of Separation Not Approved.**—In this case it is not impossible under the plan proposed that this result will happen and therefore it is not approved. *Ib.* 4—692
37. **Same—In Ending Combination, Effectual Means Should Be Provided.**—The main purpose of the Sherman Law is to forbid combinations and conspiracies in undue restraint of interstate trade and to end them by as effectual means as the court may provide. *Ib.* 4—693
38. **Same—While Conserving Property Interests, Purpose of Statute Should Not Be Sacrificed.**—A court of equity dealing with an illegal combination should conserve the property interests involved, but never in such wise as to sacrifice the purpose of the statute. *Ib.* 4—693
39. **Same—Transfer of Stock of Southern Pacific to Stockholders of Union Pacific, Would Not Effectually End Combination.**—Without precluding the District Court from considering all plans submitted as provided by the former opinion and the decree, the Supreme Court holds that a transfer of the stock of the Southern Pacific Company to the stockholders of the Union Pacific Railroad Company would not so effectually end the combination as to comply with the decree. *Ib.* 4—691
40. **Same—Ownership of Stock of a Railway Company by Stockholders of Competing Company, Will Not Effectually End Dominating Control.**—The unlawful combination found by the Supreme Court to exist as the result of the acquisition by the Union Pacific Railroad Company, through a subsidiary corporation, of 46 per cent of the capital stock of the Southern Pacific Company, for the purpose of obtaining the dominating control of the entire Southern Pacific system, will not be so effectually ended as to comply with the court's decree by a sale of such shares to the stockholders of the Union Pacific Railroad Company substantially in pro-

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portion to their respective holdings, or by a distribution thereof by dividend to such shareholders. 57 L. Ed., 308.

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41. **For Violation of Commodities Clause of Hepburn Law.—Relief against a continuance of the transportation of carrier owned coal under the Commodities Clause must be sought in a proceeding based upon the Hepburn Law of June 29, 1906, and can not be obtained in suit under the Sherman Law.** *U. S. v. Reading Company*, 226 U. S., 343. 4—712
42. **For Damages Under the Sherman Law Is An Action at Law—Minority Can Not Sue in Equity on Behalf of Corporation for Relief.—**Under section 7 of the Sherman Law, providing that any person injured by any violation of that act may sue therefor and recover threefold the damages by him sustained, the action to recover treble damages must be an action at law in which defendants have the constitutional right to a jury trial, and hence a minority stockholder in a corporation could not maintain a suit in equity on behalf of the corporation for such relief upon the corporation's refusal to sue. *Fleitmann v. United Gas Imp. Co.*, 211 F., 103. 5—429
43. **For Damages Under Sherman Law Is An Action at Law.—**When the penalty of triple damages is sought under § 7 of the Sherman Law, the liability can only be enforced through the verdict of a jury, in a court of common law. *Fleitmann v. Welsbach Street Lighting Co.*, 240 U. S., 28. 5—431
44. **Where a Statute Creates a New Offense and Gives a Remedy That Remedy is Exclusive.—**Where a statute creates a new offense and denounces the penalty, or gives a new right and declares the remedy, the punishment or remedy given can be only that which the statute prescribes. *Wilder Mfg. Co. v. Corn Products Ref. Co.*, 236 U. S., 174. 6—554
45. **The Sherman Law Prescribes the Remedies for Its Violation—Injunctive Relief Can Be Given Only at Suit of Government.—**The Sherman Law prescribes the remedies for its violation, civil and criminal, at law and in equity, and under its provisions injunctive relief can be given only at suit of the Government. Nor can such relief be granted under section 340 of the General Business Law of New York (Consol. Laws 1909, c. 20) against a combination in restraint of competition in trade in violation of its provisions except at suit of the State. *Irving v. Neal et al.*, 209 F., 477. 5—394
46. **Same—Under Laws of New York, Where No Special Remedy Is Provided, Any Appropriate Remedy Is Available to One Injured by Unlawful Combination.—**Under section 580, Penal Laws of New York (Consol. Laws, 1909, c. 40), which makes it a misdemeanor for two or more persons to combine to commit any act injurious to trade or commerce, but makes no provision for civil remedies, any appropriate remedy is avail-

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able to one specially and directly injured by its violation who may, where the combination affects his business, obtain relief by injunction. *Ib.* 5—394

47. **At Common Law a Third Person Had No Right of Action for Damages Because of Combination.**—At common law a third person had no right of action for damages because of an agreement or combination in restraint of trade. *Paine Lum-ber Co. v. Neal*, 212 F., 265. 5—441

48. **Same—Suit to Enjoin Enforcement of Unlawful Agreement in Violation of the Sherman Law and the Law of New York Can Be Maintained Only by the Government or the State.**—Though an agreement between members of certain carpenters' and wood-workers' unions binding their members not to work with building trim manufactured in non-union factories was in restraint of trade, and in violation of the Sherman Law, and General Business Law of New York, § 340, prohibiting such agreements, a suit to enjoin the enforcement thereof could be maintained only at the instance of the United States or the State of New York, and not by a third person injured thereby. *Ib.* 5—442

49. **Equitable Relief to the Public Under the Sherman Law Is by Way of Injunction or Prohibition—Relief to Be Granted in Each Case Depends Upon the Facts.**—The Sherman Law, section 4 of which alone relates to an equitable remedy for its violation, contains in terms no provision for equitable relief to the public, except by way of injunction or prohibition; and while the power to dissolve an unlawful combination clearly exists, and should be exercised when necessary to give complete relief, the legislative policy as disclosed by the terms of the act is clearly to resort to restraint rather than dissolution, except where restraint alone is inadequate. The means to be employed to put an end to such a combination are governed by no uniform rule, but depend upon the facts of the particular case; and even where dissolution seems to be required to the furnishing of complete relief, such requirement does not necessarily amount to more than that the combination be dissolved so far as unlawful. *U. S. v. Great Lakes Towing Co.*, 217 F., 658. 5—371

50. **Same—Receivership Will Not Be Resorted to Unless Necessary to Effect Dissolution of a Combination.**—While a receivership is proper, when necessary to effect the dissolution of a combination which is unlawful, as in violation of the Sherman Law, it is not always necessary, even in such case, and when it is not it should not be resorted to. *Ib.* 5—373

51. **Should Be That Most Beneficial to the Public, and Which Will Eliminate Illegal Methods.**—A towing company, which through purchases of the stock of other competing companies and the vessels of still other owners, acquired a large per-

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centage of the tugs operating on the Great Lakes, was adjudged to have created a monopoly, in violation of the Sherman Law, by using unfair means to prevent competitors from doing business anywhere on the Lakes. *Held*, that the violation of the law did not consist in the ownership of the stock and vessels so acquired, but in the illegal method of doing business; that the remedy which would be most beneficial to the public was not a dissolution of the company through a receivership and sale of its vessels to a number of separate and independent purchasers, but a decree permitting it to continue business under proper and stringent injunctive regulations, which would eliminate the illegal practices and keep the way open for full and free competition. *Ib.* 5—373

52. **If Combination Was Unlawful, and Damages Directly Caused by Appointment of Exclusive Selling Agent, Action for Damages Under the Sherman Law Proper Remedy.**—If a corporation organized by producers of slate was an unlawful combination, damages directly caused by reason of its appointment of an exclusive selling agent were recoverable as other damages under the Sherman Law, providing that any person injured in his business or property by any act forbidden or declared to be unlawful, thereby may recover threefold the damages sustained. *American Sea Green Slate Co. v. O'Halloran*, 229 F., 79. 5—308

53. **On Question of Dissolution of Illegal Combination, Court Will Not Determine Whether the Loss of Trade Resulting from Severance, Will Outweigh Benefit of Increased Competition in the Home Market.**—In considering the question of the dissolution of an illegal combination of manufacturing concerns, which has by the export of the product of one of its plants near the seaboard built up a successful foreign trade, relying on its other plants to supply the domestic market, the court can not undertake to determine whether the public injury from the loss of such trade, which might result from the severance of such plant, because, if operated independently, its product might be sold in the domestic market, would outweigh the benefit to the public of the increased competition in the home market. *U. S. v. Corn Products Refining Co.*, 234 F., 1016. 6—635

54. **Same—Where Illegal Combination Has Persistently Used Its Power to Interfere With the Free Course of Commerce, Injunction Alone Is Inadequate; There Should Be a Decree of Dissolution.**—Where an illegal combination of a majority of the plants in the country in a line of manufacture has persistently, through a number of years and in various ways, used the power given by the combination to interfere with the

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free course of commerce which the law demands, the remedy by injunction alone is inadequate, and to be effective should extend to a decree of dissolution. *Ib.* 6—637

55. **Mandamus Not Adequate to Compel Telephone Service, Since It Does Not, In Case of Strike, Reach Wrong-doer.**—Where a telephone company's service was being interrupted during a strike by acts of unknown individuals, the remedy of subscribers by mandamus to compel a restoration of the service is not sufficiently speedy, and is inadequate, since it can not reach the wrong-doers whose acts caused the interruption of the service, and therefore such remedy does not prevent a suit in equity. *Stephens v. Ohio State Tel. Co.*, 240 Fed., 766. 6—930

56. **Same—Proceeding in Equity Proper, to Enforce Telephone Service.**—Under Interstate Commerce Act Feb. 4, 1887, c. 104, 24 Stat. 379, as amended in 1889 (Act March 2, 1889, c. 382, 25 Stat. 855) and 1910 (Act June 18, 1910, c. 309, 36 Stat. 544), interstate telephone companies are required to furnish reasonable facilities for the transaction of their business, and that duty may be enforced by a proceeding in equity in the United States courts as a controversy arising under the laws of the United States. *Ib.* 6—932

57. **Same—Such a Suit Not Legislative or Administrative Function.**—A suit by the subscribers of an interstate telephone company, to require it to repair its appliances and thereafter to keep them in a good state of repair and in condition for operation, is not beyond the jurisdiction of the court, as asking the court to undertake administrative or legislative functions. *Ib.* 6—934

REMOTELY. See INCIDENTALLY, INDIRECTLY, AND REMOTELY.

REMOVAL FROM STATE COURT. See COURTS, 31.

REMOVAL OF PRISONERS.

1. **From One State to Another for Trial.**—On an application to a Federal court for the removal of a resident of the district to a distant State and district for trial, it is the duty of the court to scrutinize the indictment, disregarding technical defects, but to refuse the warrant if the crime alleged is not triable in the district to which a removal is sought, or if the indictment fails to charge any offense under the law. *In re Corning*, 51 F., 203. 1—33

2. **Habeas Corpus—Jurisdiction of Circuit Courts.**—Where a prisoner, arrested under warrant based upon an indictment in a distant State and district, is held pending an application to the district court for a warrant of removal for trial, the circuit court of the district in which he is held has authority on habeas corpus to examine such indictment and to release the prisoner if, in his judgment, the indictment should be quashed on demurrer. *In re Terrell*, 51 F., 213. 1—46

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3. Same.—On habeas corpus to release a person held under a warrant of a United States commissioner to await an order of the district judge for his removal to another district to answer an indictment, it is the right and duty of the circuit court to examine the indictment to ascertain whether it charges any offense against the United States or whether the offense comes within the jurisdiction of the court in which the indictment is pending. *In re Greene*, 52 F., 104.
1—54

RES JUDICATA.

1. Judgment—Identity of Subject Matter.—The combination complained of is not a new one, or different from that complained of in a former suit, judgment in which is pleaded as *res judicata*, because after such suit defendants modified it by eliminating part of its scope. *Straus v. American Pub. Ass'n*, 201 F., 309. 4—840
- Same—Operation of, Not Interfered With by Appeal from Judgment.—Pendency of an appeal from a judgment does not interfere with its operation as *res judicata*. *Ib.* 4—841
2. Same—Matters in Former Judgment Concluded.—The same matters being complained of in a suit in the State court and a subsequent one in the Federal court, the fact that the judgment in the State court depended on the State statutes, and that the complaint in the second suit is founded on the Federal statute, which is not within the jurisdiction of the State court, is immaterial as regards the judgment being *res judicata*. *Ib.* 4—841
3. Same—Immaterial That Former Judgment Was Erroneous.—The question involved being one the court was competent to decide, the fact that it may have decided erroneously is immaterial as regards its judgment being *res judicata*. *Ib.* 4—841
4. Same—Applies to All Who Were Parties to Former Judgment.—The judgment in a suit against corporations and an association is none the less *res judicata* because of the addition as parties to the second suit of persons who were officers of the association at its organization, and members and officers of the corporations, and took part in organizing the combinations complained of, and were included in the injunction issued in the first suit; they being privy thereto. *Ib.* 4—842
5. Same—Immaterial Though Second Suit Includes Longer Period, for Which Damages Claimed.—That the second suit seeks damages for a longer period than the first is immaterial as regards the judgment in the first being *res judicata*; the thing adjudicated being that plaintiff could recover no damages for the combination complained of, whatever its period. *Ib.* 4—842

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RESALE PRICE.

1. **Attempt to Fix Resale Price of Jobbers to Retailers, an Unlawful Restraint of Trade.**—Defendant made a watch movement known as the "Howard," which was a high grade watch, material parts of which were covered by valid patents. Defendant made direct agreements with the jobbers to whom it sold the watch, fixing the price at which they might sell to retailers, and also by a mere notice on the boxes in which the watch was sold to retailers attempted to fix the price at which they should sell. *Held*, that the agreement with the jobbers was within its rights under the patent law, but that when it sold to the jobber it had fully exercised its right, and its notice to subsequent purchasers was an unlawful restraint of trade. *U. S. v. Keystone Watch Case Co.*, 218 F., 514. 5—497
2. **A Patent Gives a Patentee No Right to Control.**—A patent gives the patentee no right to dictate price at which patented articles absolutely sold by him shall be resold by the purchaser, and so no right to restrain sale at less than the price attempted to be fixed by the patentee by a third person buying from the purchaser from the patentee at less than such price, with knowledge of the contract between the patentees and such purchaser attempting to fix the resale price. *Ford Motor Co. v. Union Motor Sales Co.*, 244 F., 158. 6—1012
3. **Same—Price Restrictions Not Validated by Clayton or Trade Commission Acts.**—There is nothing either in the Clayton Law or the Federal Trade Commission Law, validating price restrictions by a vendor on resale of property sold absolutely by him. *Ib.* 6—1013
4. **Of Product Can Not Be Controlled by the Manufacturer.**—A manufacturer can not, under the Sherman Law, control the resale price of his goods, whether they be protected by a trade-mark, a copyright, or a patent, or not, and whether sold by a jobber or by a dealer. *Lowe Motor Supplies Co. v. Weed Chain Tire Grip Co.* (Not reported.) 6—899

See also PRICE RESTRICTIONS.

RESTRAINING ORDERS. See INJUNCTIONS, 40.

RESTRAINT OF TRADE.

1. **Concerted Scheme of Railway Carriers Possessing Substantial Monopoly in Transportation of Anthracite Coal.**—An undue and unreasonable restraint of interstate commerce, forbidden by the Sherman Law, results from the concerted scheme of certain railway carriers possessing a substantial monopoly of the transportation facilities between the anthracite deposits in Pennsylvania and tide-water distributing points, and also controlling, with the aid of their subsidiary coal-mining and selling companies, nearly three-fourths of the

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- annual supply of anthracite, whereby a large number of the independent coal operators were induced to enter singly into uniform perpetual agreements for the sale to some one of such carriers, or its subsidiary coal company, of the entire output of their several mines and any others they might thereafter acquire, at a fixed percentage of the general average price prevailing at tide-water points at or near New York, which would net the operator slightly more than if he shipped and sold on his own account, the necessary result being to secure to the carriers the control at tide-water markets of the sale of a large part of the independent output. *U. S. v. Reading Co.*, 57 L. Ed., 243. 4—736
2. Same—Purchase and Delivery Within a State.—Where purchase and delivery within a State is but one step in a plan and purpose to control and dominate trade and commerce in other States for an illegal purpose, it is an interference with and restraint of interstate commerce. *U. S. v. Reading Co.*, 226 U. S., 368. 4—734
3. Involuntary Restraints Included Within Section 1 of Sherman Law.—Involuntary restraints upon interstate commerce, the result of a conspiracy between persons not themselves engaged in such commerce, to compel action by others, or to create artificial conditions which necessarily impede or burden the due course of such commerce, or restrict the common liberty to engage therein, are comprehended by the provisions of section 1 of the Sherman Law, which make it a criminal offense to engage in a conspiracy in restraint of interstate commerce, as well as voluntary restraints produced by an agreement between persons so engaged to suppress competition among themselves. *U. S. v. Patten*, 57 L. Ed., 333. 4—757
4. May Be Direct, Irrespective of Volume.—A direct and absolute restraint upon interstate trade and commerce bearing no reasonable relation to lawful means of accomplishing lawful ends is not relieved from criminal illegality under the Sherman Law, because the volume of traffic was small. *Steers v. U. S.*, 192 F., 5. 4—433
5. Minor Contracts in Partial Restraint Which Were Reasonable at Common Law, Not Within the Sherman Law.—The Sherman Law is subject to the rule that statutes are not to be interpreted to change the common law except so far as a purpose to do so is necessarily implied; therefore it is held, that the act was not intended to prohibit those minor contracts in partial restraint of trade which the common law had affirmed as reasonable, but was to be construed in accordance with the common law, developed along reasonable lines in accordance with modern commercial advance. *U. S. v. Winslow*, 195 F., 587. 5—184

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6. The words "Restraint of Trade," as used in the Sherman Law, are to be construed as including "restraint of competition."
U. S. v. Eastern States Ret. Lum. Deal. Assn., 201 F., 584.
4—861
7. Degree of Restraint Effected Is Immaterial, if the Purpose of a Conspiracy Is to Restrain.—If the purpose of a conspiracy is to restrain interstate trade, within the meaning of the Sherman Law, the degree of restraint effected thereby is immaterial to the offense. *U. S. v. Patterson et al.*, 201 F., 722.
5—37
8. By Means of the Boycott and Black-listing, Unlawful Under the Sherman Law.—The Sherman Law applies to any unlawful combination resulting in restraint of interstate commerce, including boycotts, and black-listing, whether made effective by acts, words, or printed matter. *Gompers v. Bucks Stove & Range Co.*, 221 U. S., 438.
4—779
9. Agreement Not to Enter Into Competition with Purchaser of Business, When Restraint Imposed Is Greater Than Necessary to Afford Fair Protection, Is an Unreasonable Restraint.—While the sale of a business and the surrender of the good will pertaining thereto and an agreement thereunder, within reasonable limitations as to time and territory, not to enter into competition with the purchaser, when made as part of the sale of the business, and not as a device to control or monopolize interstate commerce, is not within the Sherman Law, the imposition of a restraint greater than necessary to afford fair protection to the legitimate interests of the purchaser constitutes an unreasonable restraint within the law. *U. S. v. Great Lakes Towing Co.*, 208 F., 742.
5—360
10. Under the Sherman Law, to Support a Conviction, There Must Be an Undue Restraint of Trade.—Under the Sherman Law there must be not only a restraint of trade, but an undue restraint to support a conviction for combining in restraint of trade, and, to make a restraint unreasonable, it must appear either that the normal volume of interstate trade has been interfered with by artificial agencies affecting to a substantial degree, and to the disadvantage of the public, the price or supply of the commodity, which is the subject of the restraint, or that by means of a combination the price or supply of the commodity is or may be affected to a substantial extent to the disadvantage of the producers or purchasers thereby operating to a material degree to the injury of the public, or that there has been a direct and intentional interference with the transportation of commodities in interstate commerce. *U. S. v. Whiting*, 212 F., 473.
5—457
11. Same—Whether the Restraint Be Reasonable or Unreasonable, Is for the Jury.—Three classes of persons consisting of dif-

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ferent individuals were under the control of the individual members of each class. They formed a combination by agreeing to offer and pay no more than a specified price for milk for resale in interstate commerce. The several persons were not guilty of any illegal purpose or of any oppressive methods, and, except as to price, they were free to compete with each other. The price of milk to the producers was lowered by reason of the combination, but to what extent was not shown. Eighty-six per cent of the business of buying milk sold in designated localities for resale elsewhere after interstate transportation was in their hands. *Held*, that whether the combination was an unreasonable restraint of interstate trade, in violation of the Sherman Law, was for the jury. *Ib.* 5—458

12. Same—There May Be Unreasonable Restraints of Trade Which Are Not Monopolies.—While there can be no monopoly which is not an unreasonable restraint of trade, there may be unreasonable restraints of trade which are not monopolies. *Ib.* 5—464

14. Suppression of Competition, by Means of a Combination Controlling Large Portion of Commerce in the Article, an Undue Restraint of Trade.—Suppression of competition by means of a combination, where the parties to it control a large portion of the interstate or foreign commerce in the article, and where there is no obligation to form the combination arising out of the fact that they are losing money or the like, is an undue "restraint of trade." *U. S. v. International Harvester Co.*, 214 F., 998. 5—658

15. To Fall Within the Sherman Law, the Restraint Must Be Direct and Undue or Unreasonable.—To fall within the prohibition of the Sherman Law, it is necessary that the "restraint of trade," which it is the purpose of both sections to prevent, should be direct and not merely incidental, and should also be undue or unreasonable. If it be both direct and undue, no disguise will save it; but the courts will search for the substance and the actual effect of the transaction, and will grant the needful relief. *U. S. v. Keystone Watch Case Co.*, 218 F., 507. 5—488

16. Same—The Mere Fact a Corporation Has Largely Increased Its Business, etc., by Proper Methods, Does Not Effect Undue Restraint.—The mere fact that a manufacturing corporation has largely increased its business, either by enlarging its plants or purchasing the plants and business of other concerns, if they are acquired openly and by proper methods, does not effect an undue "restraint of trade," within the meaning of the Sherman Law, where the volume of production is not lessened, but increased, prices are not inflated, and the

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power given by the volume of business is not improperly used to injure either competitors or the public. *Ib.* 5—492

17. **Same—Fixing Resale Prices and Enforcing Them, Refusal to Sell to Those Not Conforming to Policy, Operated as a Direct and Unlawful Restraint Upon Interstate Trade.**—Defendant, the Keystone Watch Case Company, acquired the plants, business, and good will of several manufacturers of filled watch cases and also of two or three manufacturers of watch movements. All of the plants so purchased were continued in operation and their production increased. After it had acquired and was operating such plants, its board of directors adopted, and it issued to a large number of the prominent jobbers and wholesale dealers in the United States, a circular in which it stated its intention to thereafter sell its products only to those dealers who voluntarily conformed to its wishes, which were (1) that certain of its cases and watches, which were not patented, should be resold only at such prices as it should fix, and (2) that dealers to whom it sold the same should not deal in any cases except those made by it. It then proceeded to strictly enforce such policy, to which some of the jobbers conformed, while those who refused were cut off from purchasing the Keystone products, which constituted perhaps 50 per cent of those in the market. *Held*, that while, up to that time, there was nothing unlawful in its acts, the adoption and enforcement of such policy operated as a direct and unlawful restraint upon interstate trade in violation of the Sherman Law. *Ib.* 5—493
18. **Attempt of Manufacturer to Fix Resale Price of Jobber to Retailer an Unlawful Restraint.**—Defendant made a watch movement known as the "Howard," which was a high grade watch, material parts of which were covered by valid patents. Defendant made direct agreements with the jobbers to whom it sold the watch, fixing the price at which they might sell to retailers, and also by a mere notice on the boxes in which the watch was sold to retailers attempted to fix the price at which they should sell. *Held*, that the agreement with the jobbers was within its rights under the patent law, but that when it sold to the jobber it had fully exercised its right, and its notice to subsequent purchasers was an unlawful restraint of trade. *Ib.* 5—497
19. **Same—Whether Course of Action Is Likely to Effect an Unreasonable Restraint of Trade Must Be Determined in the Light of Past Experience and Observation.**—Whether a combination or course of action is unlawful, as likely to effect an unreasonable restraint of trade, where those engaged in it have made no declaration of its purpose, must be determined in the light of past experience and observation; but if, at the

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time the question is submitted for decision, it has already been in effect for a sufficient length of time, the question may better be determined by the effect it has actually produced. *Ib.* 5—501

20. **Same—Restraint Is Unlawful if Growth of Business Has Been Because of Use of Unfair Means, Limiting Production, etc.**—While a large increase in the business of a manufacturer necessarily results in a restraint of the trade of competitors, the business is not for that reason, nor because of its size alone, to be condemned as unlawful; but it is unlawful, as an unreasonable restraint, if the growth has been accomplished by fraudulent, unfair, or oppressive methods against competitors, by arbitrarily fixing or maintaining prices, by limiting production or otherwise, by deteriorating the quality of the article produced for the same price, or by arbitrarily reducing the wages of workmen or the price of raw material. *Ib.* 5—503
21. **The Prohibition Against, Is Directed to the Business of Buying or Selling for Gain.**—The prohibition against restraint of "trade," embodied in the Sherman Law, is directed to the business of buying or selling for gain, whenever the transaction forms a part of commerce among the States or with foreign nations. *Ib.* 5—500
22. **Same—Trade May Be "Restrained" by Being Hindered, etc.**—Trade may be "restrained," within the meaning of the Sherman Law, by being hindered, obstructed, or destroyed. *Ib.* 5—500
23. **An Agreement Between Ship-owners, in the Same Trade, for Assuring Regular Sailings, and a Fair Rate, to Meet Competition of Other Countries, Is Not in Itself an Unreasonable Restraint of Trade.**—An agreement between all the ship-owners engaged in the same trade as to the number of vessels each should operate, the dates of sailings, exchange of freight between lines, and rates of freight, made for the purpose of assuring shippers regular sailings and affording them a fair rate so that they might meet the competition of trade from other countries, is not in itself an unreasonable restraint of trade contrary to the Sherman Law. *U. S. v. Prince Line, Ltd.*, 220 F., 232. 5—678
24. **Same—Unreasonable Restraint of Trade Is Not Shown, Unless There Is Proof of Actual Unreasonable Interference with the Natural Course of Trade.**—A violation of the Sherman Law is not established unless there is some proof of actual unreasonable interference with the natural course of trade, and, where neither carrier nor shipper complain, it may be inferred that there is no unreasonable restraint of trade. *Ib.*

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- 25. Same—The Giving of Rebates, by a Combination, to Shippers Shipping Exclusively by Their Lines, Not Unlawful Restraint.**—The practice of a combination of ocean carriers to give rebates to all shippers who ship exclusively by their lines, which tended to secure more regular cargoes and to enable the carriers to anticipate the needs of the trade, is not an unlawful restraint of trade. *Ib.* 5—680
- 26. Whether a Manufacturing Combination Is in Restraint of Trade, Depends Upon Its Inherent Nature or Effect, the Evident Purpose of Its Acts, etc.**—Whether a manufacturing combination is one in "restraint of trade," or has monopolized or attempted to monopolize commerce, in violation of the Sherman Law, depends upon the inherent nature or effect of the combination, the evident purpose of its acts, or the intent to be inferred from the extent of control secured over the industry, the method by which such control has been brought about, and the manner in which it has been exerted, resulting in prejudice to the public interests by unduly restricting competition or unduly obstructing the course of trade. *U. S. v. United States Steel Corporation*, 223 F., 162. 6—157
- 27. Same—While the Combination Was Formed to Unite and Perpetuate Its Monopolies, It Did Not Attempt the Things Intended by Its Formation; But It Unlawfully Combined with Competitors, by Means of Pools, to Restrain Trade by Controlling Prices.**—That the United States Steel Corporation was formed by combining as constituent members corporations which were themselves large combinations, recently formed, and which had demonstrated their power to unlawfully monopolize trade in their several lines of business, warrants a finding that the organizers of the Steel Corporation intended to unite and perpetuate such monopolies and combined for that purpose. The corporation itself, however, neither attempted nor possessed the power alone to do the unlawful things intended by its formation, but it unlawfully combined with competitors, by means of pools and informal understandings, to restrain trade by controlling prices. *Ib.* 6—163
- 28. The Creation by the Steel Corporation, of a Subsidiary Corporation, to Supply the Trade in Foreign Countries, and the Establishment of Warehouses Therein, Was Not in Restraint But in Aid of Foreign Commerce by Legitimate Means.**—An important purpose of the organization of the Steel Corporation was the building up of an export trade. Such trade in iron and steel at that time was sporadic, consisting of dumping products in foreign countries when the domestic market was overcrowded, and on the whole was not profitable. The Steel Corporation by reason of its large capital and organization, for the first time created and maintains a regular

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and permanent market, by organizing a subsidiary corporation to sell the large line of diversified products, manufactured by its associate subsidiary companies, such as must be kept in stock, sending the same for distribution to the 300 warehouses which it established and maintains in 60 different countries, sending to each the things most in demand. In this manner it increased the value of its foreign trade from \$31,000,000 in 1904 to \$91,000,000 in 1913, controls from 80 to 90 per cent of such trade in iron and steel, and has been able to command better prices, although domestic prices have been generally reduced. *Held*, that such action was not in restraint of foreign commerce, in violation of the Sherman Law, but was in aid of it by legitimate methods; such trade having in fact been thereby largely created, and not taken from others. *Ib.* 6—63

29. **The Refusal of a Manufacturer of an Unpatented Article to Sell to a Dealer Who Resells at Less Than Regular Price, Is Not an Unreasonable Restraint of Trade.**—The refusal of the manufacturer of an unpatented food product, which is not a necessity of life or even a staple article of trade, who has a monopoly only because of the trade-name under which it is sold, it being open to any one else to make and sell the same article under any other name which does not infringe such trade-name, to sell to a dealer who resells at retail at less than the regular price charged by other retailers, and a price which gives to the retailer no profit, while to an extent it lessens competition, is not an unreasonable "restraint of trade," nor is it unlawful under the Clayton Law as a price discrimination, the effect of which "may be to substantially lessen competition or tend to create a monopoly," so as to entitle the would-be-purchaser to relief by injunction under section 16 of the act; but, on the contrary, the effect of such an injunction would be to restrain trade by making it impossible for competitors to handle the article, except at a loss, and to give such purchaser a monopoly. *Great Atl. & Pac. Tea Co. v. Cream of Wheat Co.*, 224 F., 571. 5—866

30. **The acquiring, by the Eastman Kodak Co., of About 20 Competing Concerns Whose Plants It Dismantled, of Stock Houses, and the Fixing of Resale Prices of Its Products, Whereby It Secured from 75 to 80 Per Cent of the Business in Such Commerce, Constituted an Undue and Unreasonable Restraint of Trade.**—The Eastman Kodak Company, of New York, a corporation engaged in the manufacture and sale of photographic apparatus and supplies, including cameras, plates, films, and paper, in the course of some 15 years acquired the ownership of the property and business of about 20 competing concerns throughout the country, whose plants were dismantled and the business discontinued or transferred to its own plants.

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If corporations, they were for the most part dissolved, and their officers, or the partners, in case of firms, bound by contract not to engage in competing business for terms of from 5 to 20 years. It also by contract with the makers obtained entire control in the United States of the imported raw paper which was recognized as the only standard paper for the manufacture of photographic printing-out paper, and by refusing to sell to other manufacturers compelled several competing companies to sell or go out of business. It acquired stock houses in the larger cities, which handled chiefly its own products, and by contracts with other dealers to whom it sold fixed resale prices and required them to sell its goods exclusively. By such means it secured control of from 75 to 80 per cent of the entire interstate trade in the articles in which it dealt. *Held*, that such methods were intended and calculated to, and did, result in an undue and unreasonable restraint of interstate trade, and in securing to the Eastman Company a "monopoly" of a part thereof, in violation of the Sherman Law. *U. S. v. Eastman Kodak Co.*, 226 F., 66. 5—887

31. **A Combination by Owners and Booking Agents of Theaters, Under Which Only Performers Booked by Such Agents and Performing in Such Theaters Will Be Employed, Is One in Restraint of Trade.**—A combination between a number of vaudeville theaters and their booking agents, the purpose of which is to keep all first-class performers for such theaters, refuse to allow them to act if they act in other theaters, and refuse to allow other theaters to have their performers if they employ other performers, and refuse to deal with performers' agents who book such performers elsewhere, is in restraint of trade, where it is alleged that, outside of the circuits into which such theaters are arranged, first-class performers can not obtain sufficient employment in the United States and Canada to make a living, as the necessary inference is that, if successful, the parties to the combination will control all first-class performers, and monopolize the supply, and thus control the business. *Marienelli, Lim. v. United Booking Offices*, 227 F., 170. 5—952

32. **The Use of "Customers Lists," by a Lumber Association, for the Purpose of Compelling Manufacturers and Wholesale Dealers in Lumber to Refrain from Selling to Consumers, an Undue Restraint of Trade.**—The Northwestern Lumbermen's Association was a voluntary membership association, having as members retail lumber dealers in the States of Minnesota, Iowa, North and South Dakota, and a part of Nebraska. A principal object of the association was to force the ultimate consumer to buy his lumber from the regular and recognized (by the association) retail dealers operating in the vicinity

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where such lumber was to be used, and to prevent the manufacturer of and wholesale dealer in lumber from selling or shipping direct to consumers. To accomplish this object, the association, among other things, issued and furnished to its members, so called "Customers' Lists." These lists were prepared by the secretary who, at the beginning of each year, would send to each member a circular letter asking for a list of the manufacturers and wholesale dealers with whom the member dealt. This information, when received, was so compiled as to show the customers of the various manufacturers and wholesale dealers in the territory covered by the members of the association. By exchange of lists, this information was extended to cover the territory of other similar organizations. When a sale or shipment was made by a manufacturer or wholesale dealer direct to a consumer, the member from that territory would notify the secretary of the sale or shipment, who thereupon would notify the customers of the offending manufacturer or wholesale dealer in regard to the unethical or irregular shipment; whereupon such customers would protest to such manufacturer or wholesale dealer against such sale or shipment. The purpose and effect of such use of the "Customers' Lists" was to coerce manufacturers and wholesale dealers to refrain from selling or shipping lumber direct to consumers. *Held*, that such use of such lists constituted an undue restraint of interstate commerce, and will be enjoined. *U. S. v. Hollis et al* (not reported) 6—995

33. Same—Test of Is Whether Restraint Is Undue.—The test is not whether by alleged methods carried out in pursuance of a conspiracy some portion of interstate commerce is annihilated, but whether such commerce is substantially interfered with or restrained. *Ib.* 6—995

34. Same—Courts Will Not Adjudicate Extent of, If Restraint Be Substantial.—The court will not adjudicate in mathematical terms the extent of the restraint, if the evidence shows that it is substantial. *Ib.* 6—995

35. Same—Motives, in Carrying Out Unlawful Purpose, Immaterial.—It is immaterial that the motives of the defendants in carrying out the activities described were of the best; the sole inquiry being whether the facts disclosed show an undue restraint of interstate commerce. *Ib.* 6—995

36. In Absolute Sale, an Attempt to Control Resale Price of Article Sold, Is in Restraint of Trade.—At least subject to limitations, a system of contracts between a manufacturer and retail dealers, whereby it, in connection with absolute sales of its product, attempts to control the resale prices for all sales, by all dealers, is a restraint on trade, invalid both at common law, and, so far as it affects interstate commerce, under the

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Sherman Law. *Ford Motor Co. v. Union Motor Sales Co.*,
244 F., 157. 6—1009

See COMBINATIONS, ETC., IN RESTRAINT OF TRADE; also STATUTES.

RIGHT OF ACTION. See ACTIONS AND DEFENSES, 5, 12, 40, 116.

RUBBER TIRES. See COMBINATIONS, ETC., 135.

RULES OF LABOR UNIONS. See COMBINATIONS, ETC., 236.

SALE.

1. **Validity of Sale.**—The sale and transfer by a corporation of its property and good will to another corporation, where such sale was within its powers, can not be repudiated on the ground that the purchaser acquired the property for the purpose of obtaining a monopoly of the business and in pursuance of an illegal combination in restraint of trade. *Metcalf v. Amer. School Furniture Co.*, 122 F., 115. 2—234
2. **A contract for sale of vessels**, even if they are engaged in interstate commerce, is not necessarily void because the vendors agree, as is ordinary in case of sale of a business and its good will, to withdraw from business for a specified period. *Cincinnati, &c., Packet Co. v. Bay*, 200 U. S., 170. 2—867
3. **Contract for Sale of Goods by Member of Combination.**—The Sherman Law does not invalidate or prevent a recovery for the breach of a collateral contract for the manufacture and sale of goods by a member of a combination formed for the purpose of restraining interstate trade in such goods. *Hadley Dean Plate Glass Co. v. Highland Glass Co.*, 143 F., 242. 2—905
4. **The transaction between the complainants and the Northern Securities Company** by which the former parted with and delivered to the latter, as a holding corporation, certain shares of the stock of the Northern Pacific Railway Company and received in exchange certain other shares of the Securities Company stock, held to be one of purchase and sale of the Northern Pacific stock, and not a bailment or trust. *Harriman v. Northern Securities Co.*, 197 U. S., 244. Affirming 134 F., 331 (2—618). 2—669
5. **Same.**—When a vendor testifies that the transaction was an unconditional sale and that he attached to his negotiations no other conditions than that of price, he is estopped from afterwards denying that this is a statement of fact and claiming that he only swore to a conclusion of law. *Ib.* 2—711
6. **Same.**—Property delivered under an executed illegal contract can not be recovered back by any party *in pari delicto*, and the courts can not relax the rigor of this rule where the record discloses no special considerations of equity, justice, or public policy. *Ib.* 2—714

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7. **Same.**—The fact that the complainants in this case acted in good faith and without intention to violate the law does not exempt them from the doctrine of *in part delicto*. All the parties having supposed the statute would not be held applicable to the transaction neither can plead ignorance of the law as against the other and the defendant secured no unfair advantage in retaining the consideration voluntarily delivered for the price agreed. *Ib.* 2—716
8. **Same.**—Where a vendor after transferring shares of railway stock to a corporation in exchange for its shares becomes a director of the purchasing corporation and participates in acts consistent only with absolute ownership by it of the railway stocks, and does so after an action has been brought to declare the transaction illegal, his right to rescind the contract and compel restitution of his original railway shares, if it ever existed, is lost by acquiescence and laches. *Ib.* 2—716
9. **Restriction of Sales of Goods.**—A manufacturer, a corporation, and its employee restricted the sales of its products to those who refrained from dealing in the commodities of its competitors by fixing the prices of its goods to those who did not thus refrain so high that their purchase was unprofitable, when it reduced the prices to those who declined to deal in the ware of its competitors so that the purchase of the goods was profitable to them. The plaintiff applied to purchase, but refused to refrain from handling the goods of the corporation's competitors, and sued it for damages caused by the refusal of the defendants to sell their commodities to him at prices which would make it profitable for him to buy them and sell them again. *Held*, the restriction of their own trade by the defendants to those purchasers who declined to deal in the goods of their competitors was not violative of the Sherman Law. *Whitwell v. Continental Tobacco Co.*, 125 F., 454. 2—271
10. **Same.**—The owner of goods may dictate the prices at which he will sell them, and the damages which are caused to an applicant to buy by the refusal of the owner to sell to him at prices which will enable him to resell them at a profit constitute no legal injury, and are not actionable, because they are not the result of any breach of duty or of contract by the owner. *Ib.* 2—279
11. **Of Business and Good Will.**—The sale of a business and the good will pertaining to it, and an agreement, within reasonable limitations as to time and territory, not to enter into competition with the purchaser, when made as a part of the sale of the business, and not as a device to control commerce, is not within the Sherman Law, but such act ren-

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ders unlawful every contract, combination, or conspiracy which directly or necessarily operates in restraint of trade between the States without regard to the form which the transaction takes. *Darius Cole Transp. Co. v. White Star Line*, 186 F., 65. 4—37

12. Same—Illegal Contracts—Lease of Vessel.—Libelant and respondent were both owners of steamers running regularly between Detroit and Toledo, and for a number of years had operated under a pooling arrangement which gave them a monopoly. At the expiration of such arrangement, libelant sold one of its boats and leased the other to respondent for a term of three years to be run between such two points, and at the same time transferred its good will, and agreed not to engage in competition during the term. The rental reserved was more than the steamer could have earned operated independently. *Held*, on the evidence, that the dominant purpose of the parties was to enable respondent to maintain its monopoly of the business, and that the lease was void as in violation of Sherman Law, and rent could not be recovered thereon. *Ib.* 4—38

13. Vendors Not Forbidden to Fix Prices and Terms of Sale of Coal Thereby.—A coal company engaged in mining and selling its coal is not prohibited by the Sherman Law, or by the law, from refusing to sell its coal, from selecting its customers, from fixing the price and terms on which it will sell its product, or from selling to different customers for different prices and on different terms. *Union Pacific Coal Co. v. U. S.*, 173 F., 739. 3—734

14. Of Articles Made by Secret Process.—The exemption from the common-law rule against monopoly and restraint of trade, and the provisions of the Sherman Law, which has been extended to contracts affecting the sale and resale, the use, or the price of articles made under a patent, or productions covered by a copyright, does not extend also to articles made under a secret process or medicine compounded under a private formula. *Park & Sons Co. v. Hartman*, 153 F., 29. 3—236

15. Same—Secret Process or Formula.—While the owner of a patent or copyright is protected in his exclusive right by the statute which gives him a monopoly, there is no statute which protects one who makes or vends an article which is made by a secret process or private formula, nor, so long as he keeps his process secret, can he bring himself within the principle of the statute which grants a temporary monopoly in consideration of the full publication of the invention or work. *Ib.* 3—236

16. A sale of license of a patented article, with a covenant not to compete, made as an ordinary incident to enhance the value

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- of the thing conveyed, was not within Sherman Law. *Blount Mfg. Co. v. Yale & Towne Mfg. Co.*, 166 F., 558. 3—579
17. **Absolute, Can Not by Notice, be Converted into Qualified, or Mere License to Use.**—Attaching a notice to a patented article which states that the article is licensed for sale and use at a specified price, that a purchase is an acceptance of the conditions, and that all rights revert to the patentee in the event of a violation of the restriction, can not convert an otherwise apparently unqualified sale into a mere license to use the invention. *Bauer & Cie v. O'Donnell*, 57 L. Ed., 1041. 6—809
18. **Same—Attempt so to Control, but an Attempt to Extend Right to Vend.**—Where the transfer of the patented article is full and complete, an attempt to reserve the right to fix the price at which it shall be resold by the vendee is futile under the statute. It is not a license for qualified use but an attempt to unduly extend the right to vend. *Henry v. Dick Co.*, 224 U. S., 1, distinguished. *Ib.*, 229 U. S., 16. 6—809
19. **Absolute and Conditional, in Attempt to Enforce Resale Price of Patented Article.**—There is an absolute as distinguished from a conditional sale of patented articles by the manufacturer, the dominant character of the dealing being one of sale with attempt to provide and enforce resale price, and title being reserved in the manufacturer only till full purchase price is paid, with right of possession only in case of default in such payment, manifestly only to enforce payment, and the manufacturer being under no obligation to take back the articles, though the parties are styled manufacturing licensor and dealer licensee, and the contract in terms grants right and license to use and vend the articles within specified territory, the manufacturer agreeing to sell its products to the dealer, and he agreeing to purchase the articles at specified times, and it being provided that he is in no way the legal representative or agent of the manufacturer, and it being stipulated that he shall pay a certain amount as agreed damages for each failure to observe the agreement to maintain resale prices. *Ford Motor Co. v. Union Motor Sales Co.*, 244 F., 156. 6—1010
20. **Same—Character of, Determined by Dominant Intent of Parties.**—In determining whether a sale of an article is conditional or absolute, courts will look to the dominant intention of the parties. *Ib.* 6—1011

SEARCH AND SEIZURE.

1. **Unreasonable Searches—Subpœna Duces Tecum—Rights of an Agent.**—A *subpœna duces tecum* commanding the secretary and treasurer of a corporation supposed to have violated the Sherman Law to testify and give evidence before the grand jury, and to bring with him and produce numerous agree-

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ments, letters, telegrams, reports, and other writings, described generically, in effect including all the correspondence and documents of his corporation originating since the date of its organization, to which nineteen other named corporations or persons were parties, for the purpose of enabling the district attorney to establish a violation of such act on the part of the witnesses' principal, constituted an unreasonable search and seizure of papers, prohibited by Fourth Amendment to the Constitution. *In re Hale*, 139 F., 496. 2—804

2. Same.—A corporation charged with a violation of the Sherman Law is entitled to immunity under the Fourth Amendment to the Constitution from such an unreasonable search and seizure as the compulsory production before a grand jury, under a subpoena duces tecum, of all understandings, contracts, or correspondence between such corporation and six other companies, together with all reports and accounts rendered by such companies from the date of the organization of the corporation, as well as all letters received by that corporation since its organization, from more than one dozen different companies, situated in seven different States. *Hale v. Henkel*, 201 U. S., 43. 2—874
3. The search and seizure clause of the Fourth Amendment was not intended to interfere with the power of courts to compel the production upon a trial of documentary evidence through a subpoena duces tecum. *Ib.* 2—904
4. The protection against unreasonable searches and seizure afforded by the Fourth Amendment to the Constitution can not ordinarily be invoked to justify the refusal of an officer of a corporation to produce its books and papers in obedience to a subpoena duces tecum, issued in aid of an investigation by a grand jury of an alleged violation of the Sherman Law, by such corporation. *Ib.* 2—905
5. In a suit in equity brought by the United States to enjoin the carrying out of a contract or combination in restraint of interstate commerce, under the Sherman Law, there can be no seizure of goods in course of transportation pursuant to the unlawful contract. Such seizure can only be made under the sixth section of the act, which authorizes seizures and condemnation by like proceedings to those provided in cases of property imported into the United States contrary to law. *U. S. v. Addyston Pipe & Steel Co.*, 85 F., 271. 1—773
6. Unreasonable Searches—Subpoena Duces Tecum.—The Fourth Amendment, prohibiting unreasonable searches and seizures, affords no protection to a witness for his refusal to produce books and papers admittedly in his possession in obedience to a subpoena duces tecum issued by a court of equity. *U. S. v. Terminal R. Ass'n*, 148 F., 489. 3—40

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SECONDARY BOYCOTT.

1. The coercion or attempted coercion of the customers of a person who is being boycotted, to refrain from dealing with him, by threats that, unless they do, they themselves will be boycotted, if carried into effect constitutes a "secondary boycott." *Gompers v. Bucks Stove & Range Co.*, 221 U. S., 437. 4—778
2. The circulation by an association among its members of a blacklist against certain persons and also among persons not members thereof, and the notifying of non-members that they must refrain from doing business with the persons blacklisted, or they, too, would be blacklisted, such action, if carried into effect against non-members, would constitute a secondary boycott and would be illegal. *U. S. v. King*, 229 F., 279. 6—420

See also **BOYCOTT**.

SELF-INCRIMINATION.

1. Privilege Against, is Personal.—The privilege against self-incrimination is personal to a witness and cannot be availed of by a corporation, to justify withholding its books, correspondence, and accounts, or closing the mouths of its servants and agents as witnesses. *Simon v. American Tob. Co.*, 192 F., 664. 4—471
2. Party Entitled to Protection Against, in Proceeding to Punish for Criminal Contempt.—In criminal proceedings for contempt the party against whom the proceedings are instituted is entitled to the protection of the constitutional provisions against self-incrimination. *Gompers v. Bucks Stove & Range Co.*, 221 U. S., 444. 4—785

SEPARATE ACTS AND CONTRACTS.

1. While a Single Contract May Be Legal, It May Be a Step in a Criminal Plot.—While no one of a number of contracts considered severally may be in restraint of trade, each of a series of innocent contracts may be a step in a concerted criminal plot to restrain interstate trade, and, if so, may thereupon become unlawful under the Sherman Law. *U. S. v. Reading Co.*, 226 U. S., 357. 4—725
2. Same—Acts Absolutely Lawful May Be Steps in a Criminal Plot. *Ib.* 4—725
3. Same—Separate Acts May Be Legal Under State Law, but Parts of Illegal Combination.—Although separate acts of the defendants may be legal under the State law, when considered alone, they may, when taken together, become parts of an illegal combination under the Sherman Law, which it is the duty of the court to dissolve. *Ib.* 4—721

SEPARATE TRIAL. See **TRIAL**.

SHINGLES. See **COMBINATIONS, ETC.**, 90, 374, 375.

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SOUTH CAROLINA DISPENSARY LAWS. See *Lowenstein v. Evans*, 69 F., 908 (1—598).

SPECIFIC PERFORMANCE. See **CONTRACTS**, 7.

SPECULATIVE DAMAGES. See **DAMAGES**, 2.

STATES.

1. **Right to Create Corporations—Interstate Commerce.**—A State can not invest a corporation organized under its laws with the power to do acts in the corporate name which would operate to restrain interstate commerce. *U. S. v. Northern Securities Co.*, 120 F., 721. 2—216
2. **Same.**—No State can, by merely creating a corporation, or in any other mode, project its authority into other States, so as to prevent Congress from exerting the power it possesses under the Constitution over interstate and international commerce, or so as to exempt its corporation engaged in interstate commerce from obedience to any rule lawfully established by Congress for such commerce; nor can any State give a corporation created under its laws authority to restrain interstate or international commerce against the will of the nation as lawfully expressed by Congress. Every corporation created by a State is necessarily subject to the supreme law of the land. *Northern Securities Co. v. United States*, 193 U. S., 197 (Harlan, Brown, McKenna, Day). 2—341
3. **Right to Create Corporations—Injunction in Northern Securities Case no Invasion.**—The enforcement of the provisions of the Sherman Law by a Federal court decree enjoining a corporation organized in pursuance of a combination of stockholders in two competing interstate railway companies for the purpose of acquiring a controlling interest in the capital stock of such companies, from exercising the power acquired by such corporation by virtue of its acquisition of such stock, does not amount to an invasion by the Federal Government of the reserved rights of the States creating the several corporations. *Northern Securities Co. v. United States*, 193 U. S., 197 (48 L. ed., 679). 2—342
4. **Jurisdiction of Federal Courts.**—A State is not a citizen within the meaning of the provisions of the Constitution or acts of Congress regulating the jurisdiction of the Federal courts. *Minnesota v. Northern Securities Co.*, 194 U. S., 48. 2—533
5. **Same.**—A State can not maintain an action in equity to restrain a corporation from violating the provisions of the Sherman Law on the ground that such violations by decreasing competition would depreciate the value of its public lands and enhance the cost of maintaining its public institutions, the damages resulting from such violations being remote and indirect and not such direct actual injury as is provided for in section 7 of the act. *Ib.* 2—554

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6. **State Corporations—Power of Congress.**—Congress has no authority, under the commerce clause or any other provision of the Constitution, to limit the right of a corporation created by a State in the acquisition, control, and disposition of property in the several States, and it is immaterial that such property, or the products thereof, may become the subjects of interstate commerce; and it is apparent that by the Sherman Law Congress did not intend to declare that the acquisition by a State corporation of so large a part of any species of property as to enable the owners to control the traffic therein among the several States constituted a criminal offense. *In re Greene*, 52 F., 104. 1—55
7. **State Corporations—Interstate Commerce—Power of Congress.**—Franchises of a corporation chartered by a State are, so far as they involve questions of interstate commerce, exercised in subordination to the power of Congress to regulate such commerce. While Congress may not have general visitatorial power over State corporations, its powers in vindication of its own laws are the same as if the corporation had been created by an act of Congress. *Hale v. Henkel*, 201 U. S., 43. 2—874
8. **State courts are without jurisdiction of a suit to recover damages under section 7 of the Sherman Law.** *Loewe v. Lawlor*, 130 F., 633. 2—563
9. **A State is neither a "person" nor a "corporation," within the meaning of the Sherman Law, and the provisions of that act are not applicable to the case where the State by its laws assumes a monopoly of the traffic in intoxicating liquors.** *Lowenstein v. Evans*, 69 F., 908. 1—598
10. **Where an action is brought against the officials of a State under section 7 of the Sherman Law, to recover damages for acts done under authority of a State statute which gives the State an entire monopoly of the traffic in intoxicating liquors (act S. C., Jan. 2, 1895), the State itself is a necessary party thereto, and consequently the Federal courts would have no jurisdiction of the action.** *Ib.* 1—603
11. **Manufacturers Within a State.**—The Sherman Law has no reference to the mere manufacture or production of articles or commodities within the limits of the several States. *Northern Securities Co. v. United States*, 193 U. S., 197. 2—339

STATE DECISIONS.

Duty of Federal Court to Follow Arises Only Where Decision is by Court of Last Resort.—The obligation of a Federal court to follow the decisions of State courts does not arise unless the State court is a court of last resort, particularly where the opinions of the lower courts are not harmonious or numerous and old enough to show a settled rule. *U. S. Tel. Co. v. Central Union Tel. Co.*, 202 F., 69. 4—884

STATE MONOPOLIES. See STATES, 9.

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STATE PRACTICE.

Conformity to, Does Not Cover Instructing Jury.—The Federal conformity statute (Rev. Stat., sec. 914), providing for conforming the procedure in the Federal courts to that in the State courts in civil actions at law, does not cover instructing the jury. *Steers v. U. S.*, 192 F., 10. 4—440

STATUTES.

I.

THE SHERMAN ANTI-TRUST LAW.

(Act of July 2, 1890; 26 Stat., 209.)

1. Constitutionality.

1. **Is a Legitimate Exercise of the Power of Congress.**—The Sherman Law is a legitimate exercise of the power of Congress over interstate commerce, and a valid regulation thereof. *U. S. v. Joint Traffic Ass'n*, 171 U. S., 505. 1—869
2. **Constitutionality of Penal Provisions.**—The penal provisions of the Sherman Law, making it a misdemeanor to engage in any combination or conspiracy in restraint of interstate commerce or to monopolize or attempt to monopolize any part of such commerce, are constitutional. *U. S. v. American Naval-Stores Co.*, 186 F., 594 4—51
3. **Validity of Criminal Provisions.**—The Sherman Law is primarily a criminal statute, prohibiting certain acts as unlawful restraints and monopolies of interstate trade and commerce and prescribing the punishment therefor, the jurisdiction conferred on circuit courts as courts of equity by section 4 to "prevent and restrain violations of this act" being made dependent on the preceding criminal sections and confined to preventing the carrying out of that which is declared in the prior sections to be criminal. Therefore every decision of the courts sustaining an injunction granted under such section has necessarily determined that the preceding sections are valid, and that the things enjoined were crimes, and in view of the numerous decisions of the Supreme Court upholding such injunctions the validity of the criminal sections is no longer open to question in the inferior courts. *U. S. v. Swift*, 188 F., 96. 4—293
4. **Is Not Unconstitutional on Its Criminal Side.**—There is no such vagueness in the Sherman Law as to render it inoperative on its criminal side, because only such contracts and combinations are within the law as, by reason of intent, or of the inherent nature of the contemplated acts, prejudice the public interests by unduly restricting competition, or unduly

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obstructing the course of trade. *Nash v. U. S.*, 229 U. S., 373; 57 L. Ed., 1232. 5—239

5. Is Not Unconstitutional for Indefiniteness.—The Sherman Law making it a criminal offense to make any contract or engage in any combination or conspiracy in restraint of interstate trade or commerce, or to monopolize, or attempt to monopolize, or conspire with any person to monopolize, any part of such trade or commerce, is not unconstitutional for indefiniteness in so far as sought to form the basis of a criminal prosecution. *U. S. v. Winslow*, 195 F., 583. 5—178

6. Is a Valid Criminal Statute.—The Sherman Law making it a criminal offense to make any contract or engage in any combination or conspiracy in restraint of interstate trade or commerce, or to monopolize or attempt to monopolize or conspire with any other person or persons to monopolize any part of such trade or commerce, is a valid criminal statute, sufficiently clear in itself to inform the accused of the nature and cause of the accusation against him, and criminal prosecutions under it do not deprive the defendants of liberty or property without due process of law. *U. S. v. Patterson et al.*, 201 F., 715. 5—28

7. Is Not Unconstitutional.—Sections 1 and 2 of the Sherman Law are not unconstitutional because of indefiniteness. *U. S. v. New Departure Mfg. Co.*, 204 F., 114. 5—156

2. Construction and operation—In general.

8. Act Operates on Monopolies in Interstate Commerce, and Not Because Commodity is a Necessary of Life.—The monopoly and restraint denounced by the Sherman Law, "to protect trade and commerce against unlawful restraints and monopolies," are a monopoly in interstate and international trade or commerce, and not a monopoly in the manufacture of a necessary of life. *U. S. v. E. C. Knight Co.*, 156 U. S., 1. 1—379

9. The statute is not limited to contracts or combinations which monopolize interstate commerce in any given commodity, but seeks to reach those which directly restrain or impair the freedom of interstate trade. The law reaches combinations which may fall short of complete control of a trade or business, and does not await the consolidation of many small combinations into the huge "trust" which shall control the production and sale of a commodity. *Chesapeake & O. Fuel Co. v. United States*, 115 F., 610, 624; 2—168

10. Common Carriers Not Included Within the Statute.—It was not the intention of Congress to include common carriers subject to the act of February 4, 1887, within the provisions of the Sherman Law, which is a special statute, relating to

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combinations in the form of trusts and conspiracies in restraint of trade. *U. S. v. Trans-Mo. Ft. Assn.*, 53 F., 440.

Case reversed, 166 U. S., 290 (1—648). 1—80

11. **Applies to Common Carriers by Railroads—Contracts Affecting Rates.**—The provisions respecting contracts, combinations, and conspiracies in restraint of trade or commerce among the several States or with foreign countries, contained in the Sherman Law, apply to and cover common carriers by railroad; and a contract between them in restraint of such trade or commerce is prohibited, even though the contract is entered into between competing railroads, only for the purpose of thereby affecting traffic rates for the transportation of persons and property. *U. S. v. Trans-Mo. Ft. Assn.*, 166 U. S., 290. 1—648

12. **Act Applies to All Contracts in Restraint of Interstate or Foreign Commerce—Not Confined to Unreasonable Restraints.**—The prohibitory provisions of the Sherman Law apply to all contracts in restraint of interstate or foreign trade or commerce without exception or limitation; and are not confined to those in which the restraint is unreasonable. *Ib.* 1—682

13. **Act Aimed at All Restraints—Reasonableness of Restraints Immaterial.**—The act of Congress is aimed against all restraints of interstate commerce, and its purpose is to permit commerce between the States to flow in its natural channels, unrestricted by any combinations, contracts, conspiracies, or monopolies whatsoever. The reasonableness of the restrictions in a given case is immaterial. *U. S. v. Hopkins*, 82 F., 529. 1—725

Reversed, 171 U. S., 579 (1—941).

14. **Test of Validity of Contract or Combination Under the Sherman Law.**—The test of the violation of the Sherman Law, by a contract or combination, is its effect upon competition in commerce among the States. If its necessary effect is to stifle or to directly and substantially restrict interstate commerce, it falls under the ban of the law, but if it promotes, or only incidentally or indirectly restricts, competition, while its main purpose and chief effect are to promote the business and increase the trade of the makers, it is not denounced or avoided by that law. *Phillips v. Iola Portland Cement Co.*, 125 F., 593. 2—284

15. **The Sherman Law is not intended to affect contracts which have only a remote and indirect bearing on commerce between the States.** *Field v. Barber Asphalt Paving Co.*, 194 U. S., 618. 2—555

16. **The Sherman Law does not apply to a contract or combination relating to the business of manufacturing within a State.** *Robinson v. Suburban Brick Co.*, 127 F., 804. 2—312

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17. The Sherman Law does not and could not constitutionally affect any monopoly or contract in restraint of trade, unless it interferes directly and substantially with interstate commerce, or commerce with foreign nations. *U. S. v. Addyston Pipe & Steel Co.*, 78 F., 712. 1—630
18. Any agreement or combination which directly operates, not alone upon the manufacture, but upon the sale, transportation, and delivery of an article of interstate commerce by preventing or restricting its sale thereby regulates interstate commerce to that extent, and thus trenches upon the power of the national legislature and violates the statute. *Addyston Pipe & Steel Co. v. U. S.*, 175 U. S., 211. 1—1009
19. Effect of the Sherman Law Upon Contracts in Restraint of Trade Which at Common Law Were Not Unlawful.—The effect of the Sherman Law is to render contracts in restraint of trade, as applied to interstate commerce, unlawful in an affirmative or positive sense, and punishable as a misdemeanor, and also to create a right of civil action for damages in favor of persons injured thereby, and a remedy by injunction in favor both of private persons and the public against the execution of such contracts and the maintenance of such trade restraints. *U. S. v. Addyston Pipe & Steel Co.*, 85 F., 271. 1—772
20. Test of Legality.—The Sherman Law declaring all contracts and combinations illegal if in restraint of trade or commerce among the States does not leave to the courts the consideration of the question whether the restraint is or is not unreasonable and such as would have rendered the contract invalid at common law. The only question in each case where the validity of a contract or combination under the law is involved is whether or not its necessary effect is to restrain interstate commerce. *Chesapeake & Ohio Fuel Co. v. U. S.*, 115 F., 610. 2—151
21. Same.—The test of the violation of the Sherman Law by a contract or combination is its effect upon competition in commerce among the States. If its necessary effect is to stifle or to directly and substantially restrict interstate commerce, it falls under the ban of the law, but if it promotes, or only incidentally or indirectly restricts, competition, while its main purpose and chief effect are to promote the business and increase the trade of the makers, it is not denounced or avoided by that law. *Phillips v. Iola Portland Cement Co.*, 125 F., 593. 2—284
22. Construction—Act Includes Every Combination which Directly and Substantially Restricts Interstate Commerce.—The generality of the language used in the Sherman Law, declaring illegal "every contract, combination, or conspiracy in restraint of trade or commerce among the several States or

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- with foreign nations," indicates the purpose of Congress to include in the prohibition every combination which directly and substantially restricts interstate commerce, whatever its form. *U. S. v. Northern Securities Co.*, 120 F., 721. 2—215
23. Same.—The Sherman Law applies to interstate carriers of freight and passengers, and any contract or combination which directly and substantially restricts the right of such a carrier to fix its own rates, independently of its natural competitors, places a direct restraint upon interstate commerce, in that it tends to prevent competition, and is in violation of the act, whether the rates actually fixed be reasonable or unreasonable. *Ib.* 2—220
24. Same.—The Sherman Law embraces and declares to be illegal every contract, combination, or conspiracy, in whatever form, of whatever nature, and whoever may be parties to it, which directly or necessarily operates in restraint of trade or commerce among the several States or with foreign nations. *Northern Securities Co. v. United States*, 193 U. S., 197. (Harlan, Brown, McKenna, Day). 2—339
25. That act has no reference to the mere manufacture or production of articles or commodities within the limits of the several States. *Ib.* 2—461
26. The act is not limited to restraints of interstate and international trade or commerce that are unreasonable in their nature, but embrace all direct restraints, reasonable or unreasonable, imposed by any combination, conspiracy, or monopoly upon such trade or commerce. *Ib.* 2—461
27. Railroad carriers engaged in interstate or international trade or commerce are embraced by the act. *Ib.* 2—461
28. Combinations, even among private manufacturers or dealers, whereby interstate or international commerce is restrained, are equally embraced by the act. *Ib.* 2—461
29. Every combination or conspiracy which would extinguish competition between otherwise competing railroads engaged in interstate trade or commerce, and which would in that way restrain such trade or commerce, is made illegal by the act. *Ib.* 2—462
30. The natural effect of competition is to increase commerce, and an agreement whose direct effect is to prevent this play of competition restrains instead of promotes trade and commerce. *Ib.* 2—462
31. The Sherman Law was leveled, as appears by its title, at only unlawful restraints and monopolies. Congress did not intend to reach and destroy those minor contracts in partial restraint of trade which the long course of decisions at common law had affirmed were reasonable and ought to be upheld. *Northern Securities Co. v. United States*, 193 U. S., 197. (Brewer, concurring.) 2—341

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32. The general language of the act is limited by the power which each individual has to manage his own property and determine the place and manner of its investment. Freedom of action in these respects is among the inalienable rights of every citizen. *Ib.* 2—488
33. One of the purposes of the Sherman Law, in making illegal every contract, combination, or conspiracy in restraint of trade or commerce among the several States, is to maintain interstate commerce on the basis of free competition, and any contract, combination, or conspiracy, the purpose or direct effect of which is to restrict such free competition by way of transportation or otherwise, is in restraint of interstate commerce and unlawful. (Per *Buffington*, C. J.) *U. S. v. Reading Co.*, 183 F., 459. 3—913
34. Not Every Combination in Restraint of Competition Unlawful.—The provisions of the Sherman Law, making unlawful any combination “in restraint of trade or commerce among the several States” or to monopolize any part of such trade or commerce, do not make every combination in restraint of competition in interstate trade unlawful, but there may be a restraint of competition that does not amount to a restraint of trade within the meaning of the act. *U. S. v. du Pont, etc., Co.*, 188 F., 151. 4—374
35. In determining whether or not a combination is in violation of the Sherman Law, as in restraint of interstate commerce, it is immaterial that such is not its ultimate object, which is in most cases to increase the trade and profits of the parties to such combination; nor is it material to ascertain what proportion the resulting restraint of interstate commerce bears to other results. The true inquiry is whether it tends directly to appreciably restrain interstate trade, and, if it does, it is within the statute, although such effect may not be so considerable as its other effects. *Ellis v. Inman, Poulson & Co.*, 131 F., 182. 2—577
36. Section 1 of the Sherman Law makes a distinction between a contract and a combination or conspiracy in restraint of trade. *Rice v. Standard Oil Co.*, 134 F., 464. 2—633
37. The Interstate Commerce Act and the act known as the “Sherman Law” are separate and independent acts, not germane in character and purpose; and therefore jurisdiction in the circuit court of the United States over a bill in equity to enjoin a railroad company from granting rebates to favored shippers can not be maintained upon the ground that such act of the railroad company is a monopoly within the meaning of the second section of said Sherman Law. *United States v. Atchison, T. & S. F. Ry. Co.*, 142 F., 176. 2—831
38. Acts done under an agreement legal when made, but which became illegal on the passage of the Sherman Law, are done in

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- violation of that act. *U. S. v. Trans-Mo. Ft. Assn.*, 166 U. S. 290. 1—669
39. The statute has no concern with prices, but looks solely to competition and to the giving of competition full play by making illegal any effort at restriction upon competition. Restraint of trade is not dependent upon any consideration of reasonableness or unreasonableness in the combination averred, nor is it to be tested by the prices that result from the combination. *U. S. v. Swift & Co.*, 122 F., 529. 2—237
40. The Sherman Law should have a reasonable construction—one which tends to advance the remedy it provides and to abate the mischief at which it was leveled. *Whitwell v. Continental Tobacco Co.*, 125 F., 454. 2—271
41. Scope of the Statute.—The words "trade" and "commerce," as used in the Sherman Law, are synonymous. The use of both terms in the first section does not enlarge the meaning of the statute beyond that employed in the common-law expression "contract in restraint of trade," as they are analogous to the word "monopolize," used in the second section of the act. *U. S. v. Patterson*, 55 F., 605. 1—174
42. Same.—The word "monopolize" is the basis and limitation of the statute, and hence an indictment must show a conspiracy in restraint by engrossing or monopolizing or grasping the market. It is not sufficient simply to allege a purpose to drive certain competitors out of the field by violence, annoyance, intimidation, or otherwise. *Ib.* 1—177
43. Scope of the Statute—Conspiracy.—The Sherman Law, section 1, declaring illegal "every contract, combination in the form of trust or otherwise, or conspiracy" in restraint of trade or commerce among the States or with foreign nations, is not aimed at capital merely and combinations of a contractual nature, which by force of the title, "An act to protect trade and commerce against unlawful restraints and monopolies," are limited to such as the courts have declared unlawful, the words "in restraint of trade" having, in connection with the words "contract" and "combination," their common-law significance, but the term "conspiracy" is used in its well-settled legal meaning, so that any restraint of trade or commerce, if to be accomplished by conspiracy, is unlawful. *U. S. v. Debs*, 64 F., 724. 1—322
44. Same—Construction.—The construction of the statute is not affected by the use of the phrase "in restraint of trade," rather than one of the phrases "to injure trade" or "to restrain trade." *Ib.* 1—352
45. Same.—The word "commerce," in the statute, is not synonymous with "trade," as used in the common-law phrase "restraint of trade," but has the meaning of the word in that clause of

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- the Constitution which grants to Congress power to regulate interstate and foreign commerce. *Ib.* 1—353
46. **Broad Application of the Act.**—The Sherman Law has a broader application than the prohibition of restraints of trade unlawful at common law. It prohibits any combination which essentially obstructs the free flow of commerce between the States, or restricts, in that regard, the liberty of a trader to engage in business; and this includes restraints of trade aimed at compelling third parties and strangers involuntarily not to engage in the course of interstate trade except on conditions that the combination imposes. *Loewe v. Lawlor*, 208 U. S., 293. 3—341
47. **Persons Engaged in Intrastate Trade May Come Within the Meaning of the Act.**—A combination may be in restraint of interstate trade and within the meaning of the Sherman Law although the persons exercising the restraint may not themselves be engaged in interstate trade, and some of the means employed may be acts within a State and individually beyond the scope of Federal authority, and operate to destroy intrastate trade as interstate trade, but the acts must be considered as a whole, and if the purposes are to prevent interstate transportation the plan is open to condemnation under the Sherman Law. *Ib.* 3—350
48. **No Distinction Made Between Classes.**—The Sherman Law makes no distinction between classes. Organizations of farmers and laborers were not exempted from its operation, notwithstanding the efforts which the records of Congress show were made in that direction. *Ib.* 3—351
49. **Combinations Prohibited.**—To constitute a violation of the Sherman Law, there must be a contract, combination, or conspiracy which in purpose or effect tends to restrain trade or commerce among the States or to monopolize some portion thereof. There must be a meeting of the minds of two or more to accomplish some common purpose directly violative of the act or a purpose which will, whether intentionally or not, in effect constitute a restraint of trade and commerce among the several States. (Per *Gray*, C. J.) *U. S. v. Reading Co.*, 183 F., 455. 3—906
50. **The mere extent of acquisition of business or property achieved by fair and lawful means can not be the criterion of monopoly within the meaning of the Sherman Law, but in addition to acquisition and acquirement there must be an intent by unlawful means to exclude others from the same traffic or business, or from acquiring by the same means property and material things.** (Per *Gray*, C. J.) *Ib.* 3—908
51. **The prohibitory provisions of the Sherman Law apply to all contracts in restraint of interstate or foreign trade or commerce, without exception or limitation, and are not confined**

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to those in which the restraint is unreasonable. *Ware-Kramer Tobacco Co. v. American Tobacco Co.*, 180 F., 165.

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52. Applies Only to Contracts Which Directly Restrain.—The power of Congress to legislate on the subject of contracts and combinations in restraint of trade is derived from its constitutional power to regulate interstate and foreign commerce, and the Sherman Law is to be so construed, and applies only to contracts or combinations which directly, immediately, and necessarily affect commerce among the States or with foreign nations. *Bigelow v. Calumet & Hecla Mining Co.*, 167 F., 725.

3—624

53. Acts Done in Foreign Countries.—The prohibitions of the Sherman Law do not extend to acts done in foreign countries, even though done by citizens of the United States and injuriously affecting other citizens of the United States. *American Banana Co. v. United Fruit Co.*, 213 U. S., 357.

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54. Same.—A statute will, as a general rule, be construed as intended to be confined in its operation and effect to the territorial limits within the jurisdiction of the lawmaker, and words of universal scope will be construed as meaning only those subject to legislation. *Ib.*

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55. Same.—While a country may treat some relations between its own citizens as governed by its own laws in regions subject to no sovereign, like the high seas, or to no law recognized as adequate, the general rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where it is done. *Ib.*

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56. The Sherman Law prohibiting a monopoly provides its own penalties for the violations of its provisions, and does not deprive the offender of redress for a civil injury. *N. W. Consol. Milling Co. v. Callam & Son*, 177 F., 788.

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57. May Be Illegal, Even if Volume of Traffic is Small.—A direct and absolute restraint upon interstate trade and commerce bearing no reasonable relation to lawful means of accomplishing lawful ends, is not relieved from criminal illegality under the Sherman Law, because the volume of traffic affected was small. *Steers v. U. S.*, 192 F., 1.

4—432

58. Supreme Court Does Not Dissent from Conclusions in U. S. v. Debs.—The court enters into no examination of the Sherman Law, on which the circuit court mainly relied to sustain its jurisdiction; but it must not be understood that it dissents from the conclusions of that court in reference to the scope of that act, but simply that it prefers to rest its judgment on the broader ground discussed in its opinion, believing it important that the principles underlying it should be fully stated and fully affirmed. *In re Debs*, 158 U. S., 504. 1—565

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59. While the primary object of the Sherman Law was doubtless to prevent the destruction of legitimate and healthy competition in interstate commerce by the engrossing and monopolizing of the markets for commodities, yet its provisions are broad enough to reach a combination or conspiracy that will interrupt the transportation of such commodities and persons from one State to another. *U. S. v. Workingmen's Amalgamated Council*, 54 F., 995, cited. *U. S. v. Cassidy*, 67 F., 698. 1—452
60. The Sherman Law does not give any right of action for damages sustained by the payment of excessive, unjust, or unreasonable rates to interstate carriers, such relief being provided for by the Interstate-commerce act. *Meeker v. Lehigh Valley R. R. Co.*, 162 F., 363. 3—394
61. Applies to Unlawful Restraints by Means of Boycotts and Black-listing.—The Sherman Law applies to any unlawful combination resulting in restraint of interstate commerce, including boycotts and black-listing, whether made effective by acts, words, or printed matter. *Gompers v. Bucks Stove & Range Co.*, 221 U. S., 438. 4—779
62. Same—Applies to Every Device Whereby Commerce is Restrained.—The court's protective powers extend to every device whereby property is irreparably damaged or interstate commerce restrained; otherwise the Sherman Law would be rendered impotent. *Ib.* 4—780
63. Is a Limitation of Rights.—The Sherman Law is a limitation of rights which may be pushed to evil consequences and should therefore be restrained. *Standard Sanitary Mfg. Co. v. U. S.*, 226 U. S., 49. 4—649
64. Same—Is Sufficiently Comprehensive to Prevent Evasions of Its Policy.—The character of the Sherman Law is sufficiently comprehensive and thorough to prevent evasions of its policy by disguise and subterfuge. *Ib.* 4—649
65. Same—Is Its Own Measure of Right and Wrong.—The Sherman Law is its own measure of right and wrong; courts can not declare an agreement which is against its policy legal because of the good intentions of the parties making it. *Ib.* 4—649
66. Does Not Restrain Power to Make Normal Contracts, but Forbids Contracts to Suppress Competition.—While the Sherman Law does not forbid or restrain the power to make usual and normal contracts to further trade through normal methods, whether by agreement or otherwise, it does forbid contracts entered into according to a concerted scheme to unduly suppress competition and restrain freedom of commerce among the States. *U. S. v. Reading Co.*, 226 U. S., 355. 4—723
67. Does Not Extend to Reducing All Manufacture to Isolated Units.—The disintegration aimed at by the Sherman Law does not extend to reducing all manufacture to isolated units of the lowest degree. *U. S. v. Winslow*, 227 U. S., 217. 5—213

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- 68. Punishes Conspiracies on the Common-Law Footing.**—The Sherman Law punishes the conspiracies at which it is aimed on the common-law footing and does not make the doing of any act other than the act of conspiring a condition of liability. In this respect it differs from § 5440 and the indictment need not aver overt acts in furtherance of the conspiracy. *Nash v. U. S.*, 229 U. S., 378; 57 L. Ed., 1232. 5—239
- 69. Same—Court Will Not Add Anything to Its Provisions.**—The Supreme Court can see no reason for reading into the Sherman Law more than it finds there. *Ib.* 5—239
- 70. Is Designed to Reach All Combinations.**—The Sherman Law is broadly designed to reach all combinations in unlawful restraint of trade and tending, because of the agreements or combinations entered into, to build up and perpetuate monopolies. *Straus v. American Pub. Ass'n*, 231 U. S., 234. 4—854
- 71. Same—Is a Limitation of Rights.**—The Sherman law is a limitation of rights which may be pushed to evil consequences and may, therefore, be restrained. *Ib.* 4—854
- 72. While Not Reaching Normal Contracts, Broadly Condemns All Combinations.**—The Sherman Law, as construed by the Supreme Court in the *Standard Oil Case*, while not reaching normal and usual contracts incident to lawful purposes and in furtherance of legitimate trade, does broadly condemn all combinations and conspiracies which restrain the free and natural flow of trade in the channels of interstate commerce. *Eastern States Ref. Lum. Deal. Assn. v. U. S.*, 234 U. S., 609. 4—871
- 73. Was Enacted Not Only to Prevent Injury to the Individual, but Harm to the General Public.**—The Sherman Law is founded on broad conceptions of public policy and its prohibitions were enacted not only to prevent injury to the individual but harm to the general public, and its prohibitions and the remedies it provides are coextensive with such conceptions. *Wilder Mfg. Co. v. Corn Products Ref. Co.*, 236 U. S., 174. 6—553
- 74. Same.—Where a Statute Creates a New Offense, and Declares the Remedy, the Remedy is Exclusive.**—Where a statute creates a new offense and denounces the penalty, or gives a new right and declares the remedy, the punishment or remedy given can be only that which the statute prescribes. *Ib.* 6—554
- 75. Applies to a Combination Operating Partly Within and Partly Without the United States.**—Extraterritorial effect is not given to the provisions of the Sherman Law by construing it to forbid a combination of foreign and domestic corporations to restrain competition in and to monopolize the trans-

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portation of freight and passengers between Puget Sound and Yukon River points over a route which lies in part outside the United States. *U. S. v. Pacific & Arctic R. & N. Co.*, 57 L. Ed., 742. 5—231

- 76. Not Intended to Prohibit Minor Contracts Permitted by the Common Law.**—The Sherman Law is subject to the rule that statutes are not to be interpreted to change the common law except so far as a purpose to do so is necessarily implied; therefore it is *held*, that the act was not intended to prohibit those minor contracts in partial restraint of trade which the common law had affirmed as reasonable, but was to be construed in accordance with the common law, developed along reasonable lines in accordance with modern commercial advance. *U. S. v. Winslow*, 195 F., 587. 5—184

- 77. A Combination May Be in Violation of the Sherman Law, Although the Restraint or Monopoly Has Not Been Attempted to Any Harmful Extent, but is Potential Only.**—A combination may be one in restraint of interstate trade and commerce, or to monopolize a part of such trade and commerce, in violation of the Sherman Law, although such restraint or monopoly may not have been attempted to any harmful extent, but is potential only. *U. S. v. International Harvester Co.*, 214 F., 993. 5—647

- 78. To Fall Within the Prohibition of, the Restraint on Trade Must Be Direct, and Undue or Unreasonable.**—To fall within the prohibition of the Sherman Law, it is necessary that the "restraint of trade," which it is the purpose of both sections to prevent, should be direct, and not merely incidental, and should also be undue or unreasonable. If it be both direct and undue, no disguise will save it; but the courts will search for the substance and the actual effect of the transaction, and will grant the needful relief. *U. S. v. Key-stone Watch Case Co.*, 218 F., 507. 5—488

- 79. Prohibits Only Unreasonable Restraint of Trade, Whether Applied to Acts of Carriers or to Acts of Others.**—The construction that the Sherman Law prohibits only unreasonable restraint of trade is the same when applied to acts of common carriers as when applied to others. *U. S. v. Prince Line, Ltd.*, 220 F., 232. 5—878

- 80. Covers Only Contracts, Combinations, and Conspiracies Which Are Unreasonably in Restraint of Trade.**—The Sherman Law declaring illegal every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations covers only contracts, combinations, and conspiracies which are unreasonably in restraint of interstate trade or commerce, though possibly every conspiracy is unreasonably in

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restraint thereof, on the theory that there can be no reasonable conspiracy, or conspiracy to do a reasonable thing. *Patterson v. U. S.*, 222 F., 618. 5—90

81. Same—Includes Conspiracies Between Competitors, or Between Officers of One Competitor Against Another Competitor.—The Sherman Law includes conspiracies between competitors, or between the officers and agents of one competitor, on its behalf, against another competitor, and also includes conspiracies between any persons against any other person. *Ib.* 5—90

82. Same—Not Necessary that the Execution of the Conspiracy Results in Benefit to the Conspirators.—To bring a conspiracy within the Sherman Law, it is not essential that its execution be of any benefit to the conspirators; it being sufficient that it will be in restraint of another's interstate trade or commerce. *Ib.* 5—91

83. Manufacturer Can Not Control Resale Price of a Product, by Price Agreement, Without Violating the Sherman Law.—A manufacturer can not, without violating the Sherman Law, in connection with an absolute sale of its product (though with the patented cartons containing it) to a jobber, control the price at which the package shall be resold by the jobber, or by the retailers who buy from the jobber. *U. S. v. Kellogg Toasted Corn Flake Co.*, 222 F., 728. 5—854

84. Has Not Changed the Rule that a Trader May Refuse to Deal With Any Proposing Buyer.—Neither the Sherman Law nor the Clayton Law, has changed the rule that a trader may reject the offer of a proposing buyer for any reason that appeals to him, whether it be because he does not like the buyer's business methods, or because of some personal difference. *Great Atl. & Pac. Tea Co. v. Cream of Wheat Co.*, 227 F., 49. 5—877

85. Does Not Forbid the Monopoly Given an Owner by the Trade-mark Law.—The monopoly given the owner of a trade-mark by the Trade-Mark laws is not forbidden by the Sherman Law, or any other act of Congress. *Coca-Cola Co. v. Butler & Sons*, 229 F., 232. 6—412

86. Same—Manufacturer Selling Only to Licensed Bottlers, and Maintaining a System of Inspection of Licensed Plants, Not a Violation of the Sherman Law.—Where the manufacturer of a sirup, used as the principal ingredient in a beverage and sold by it only to bottlers licensed by it, guaranteed the purity and quality of the beverage by using distinctive tops and labels on its bottles, and to protect itself against claims for damages on the guaranty maintained a system of inspection of the plants of its licensed bottlers, it did not violate the Sherman Law, as its requirements were reasonable and beneficial to the public, in view of its responsibilities and

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- the right of purchasers to obtain the identical article which they desired to buy. *Ib.* 6—412
87. **Applies to Interstate Railroads.**—The Sherman Law applies to interstate railroads which are among the principal instrumentalities of interstate commerce. *U. S. v. Union Pacific R. R. Co.*, 226 U. S., 82. 4—672
88. **Same—Is Intended to Reach and Prevent All Combinations.**—The Sherman Law is intended to reach and prevent all combinations which restrain freedom of interstate trade, and should be given a reasonable construction to this end. *Ib.* 4—672
89. **Same—In Its Terms, Embraces Every Contract in Restraint of Interstate Trade.**—The Sherman Law, in its terms, embraces every contract or combination in form of trust or otherwise or conspiracy in restraint of interstate trade. *Ib.* 4—675
90. **Same—Should be Construed to Preserve Free Competition.**—Courts should construe the Sherman Law with a view to preserve free action of competition in interstate trade, which was the purpose of Congress in enacting the statute. *Ib.* 4—675
91. **Its Main Purpose is to Forbid Combinations in Undue Restraint of Trade.**—The main purpose of the Sherman Law is to forbid combinations and conspiracies in undue restraint of interstate trade and to end them by as effectual means as the court may provide. *U. S. v. Union Pacific R. R. Co.*, 226 U. S., 476. 4—693
92. **Same—Does Not Apply to Purely Intrastate Commerce, or Where Effect is Merely Incidental and Not Direct.**—The Sherman Law does not apply to a combination affecting trade or commerce that is purely intrastate, or where the effect on interstate commerce is merely incidental and not direct; but although carried on wholly within a State, if the necessary operation of a combination is to directly impede and burden the due course of interstate commerce, it is within the prohibition of the statute; and so held as to a corner in cotton to be run in New York City. *U. S. v. Patten*, 226 U. S., 543. 4—759
93. **Refusal of Common Carriers to Establish Through Routes With Independent Connecting Carriers, May Constitute Violation of.**—While under the Interstate Commerce Act a carrier may select its through route connections, agreements for such connections may constitute violations of the Sherman Law if made not from natural trade reasons or on account of efficiency but as a combination and conspiracy in restraint of interstate trade and for the purpose of obtaining a monopoly of traffic by refusing to establish routes with independent connecting carriers. *U. S. v. Pacific & Arctic R. & N. Co.*, 228 U. S., 104. 5—229

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- 94. A Railroad Lease Antedating Sherman Law Does Not Render Act Inapplicable.**—If a railroad lease created a control or unity of competing interests forbidden by the Sherman Law, the fact that it long antedated the statute did not render the act inapplicable. *Boyd v. N. Y. & H. R. R. Co.*, 220 F., 180.
5—519
- 95. Does Not Apply to Lease by One Railroad of Another, Where Both Were Constructed as Part of One General System, the Lease Making Only Immaterial Changes in Former Lease.**—Where the relation of lessor and lessee between two railroad corporations, whose lines had been originally constructed as part of the same general system and continuously operated under one management, was reversed in 1885 by the surrender of the leases and a lease of the lines belonging to the former lessee to the former lessor and that lease was superseded by a new lease in 1893 for the balance of the term of the lease of 1885, the new lease making only immaterial changes in the former lease, neither of those transactions affected the exemption from the operation of the Sherman Law of the proprietary relations existing prior to the passage of that act. *U. S. v. Southern Pacific Co.*, 239 F., 101.
6—849
- 96. Same—That Lease Was Not Authorized by State Statute, Does Not Render It Subject to the Sherman Law.**—That a lease of railroad lines was not authorized by State statutes does not render it subject to the Sherman Law, since that act deals with actual conditions affecting interstate commerce, whether they are authorized by State statute or not. *Ib.* 6—849
- 97. Same—Where There Has Been no Competition Between Two Railroads Subject to Common Control Since Their Construction, Sherman Law Does Not Apply.**—Where there had been since 1870 a continuous common control of the railroads owned by two corporations, effected by leases and unquestioned by the State, so that there never had been from the time of their construction any existing competition between them, and the lessee in 1899 purchased the stock of the lessor company, the Sherman Law does not apply, though two of the lines would be competing if the relationship were dissolved, since that act was not intended to create competition that had never before existed by destroying a proprietary relationship existing at the time of its passage. *Ib.*
6—849

3. Remedies and Repeals.

- 98. Removes the Limitations on Action, and Permits Suit Where Service Can Be Made.**—The provision in the Sherman Law that any person injured in his business or property by any other person or corporation, by reason of anything forbid-

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den or declared unlawful by the act, may sue therefor in any circuit court in the district in which defendant resides or is found, merely removes the existing limitations on the venue of actions between diverse citizens, and permits plaintiff to sue defendant wherever he can serve defendant with process good where executed. *Thorburn v. Gates*, 225 F., 615. 6—200

99. Prescribes the Remedies for Its Violation.—The Sherman Law prescribes the remedies for its violation, civil and criminal, at law and in equity, and under its provisions injunctive relief can be given only at suit of the Government. Nor can such relief be granted under section 340 of the General Business Law of New York (Consol. Laws 1909, c. 20) against a combination in restraint of competition in trade in violation of its provisions except at suit of the State. *Irving v. Neal et al.*, 209 F., 476. 5—393

100. Not Repealed by the Judicial Code.—The Sherman Law, providing that any person injured by reason of any violation thereof, may sue in any circuit court in the district in which the defendant resides or is found, was not repealed by the Judicial Code, which, in section 289 abolishes the circuit courts, in section 24, paragraph 23, gives district courts jurisdiction of all suits under any law to protect trade against restraints and monopolies, in section 291 provides that when, under any law not embraced within that act, any reference is made to, or any power or duty is conferred or imposed upon, the circuit courts, such reference shall be deemed to refer to and to confer such power and impose such duty upon the district courts, and in section 297 provides that all acts, in so far as they are embraced within or superseded by that act, are thereby repealed, since the only radical change made by the Judicial Code was the abolition of the circuit courts, the purpose in other respects being to codify the existing law; and hence Judicial Code, section 51, requiring certain actions to be brought in the district of defendant's residence, does not apply to suits for violations of the Sherman Law. *Wogan Bros. v. American Sugar Ref. Co.*, 215 F., 273. 5—467

101. The Patent Laws Not Repealed by the Sherman Law.—The patent laws, which preserve to a patentee the exclusive right for a limited time of making and vending the patented article, are not repealed by the Sherman Law, and the patentee by virtue of his patent may impose reasonable conditions of ballment and sale. *U. S. v. Motion Picture Patents Co.*, 225 F., 803.

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Section 1.

- 102. Conspiracy in Restraint of Interstate Commerce.**—A combination by railroad employees to prevent all the railroads coming into a large city engaged in carrying the United States mails and in interstate commerce from carrying freight and passengers, hauling cars, and securing the services of persons other than strikers, and to induce persons to leave the service of such railroads, is within section 1 of the Sherman Law, which provides that every contract, combination in the form of trust or otherwise, "or conspiracy in restraint of trade or commerce" among the States is illegal. *U. S. v. Elliott*, 64 F., 27. 1—311
- 103. Same.**—The Sherman Law, section 1, is not aimed at capital merely and combinations of a contractual nature, which by force of the title, "An act to protect trade and commerce against unlawful restraints and monopolies," are limited to such as the courts have declared unlawful. *U. S. v. Debs*, 64 F., 724. 1—322
- 104. Same.**—The term "conspiracy" in section 1 of the Sherman Law is used in its well-settled legal meaning, so that any restraint of interstate trade or commerce, if accomplished by conspiracy, is unlawful. *Ib.* 1—352
- 105. What Contracts, Combinations, or Conspiracies Violate the Sherman Law.**—Every contract, combination, or conspiracy the necessary effect of which is to stifle or to directly and substantially restrict competition in commerce among the States is in restraint of interstate commerce, and violates section 1 of the Sherman Law. *Whitwell v. Continental Tobacco Co.*, 125 F., 454. 2—271
- 106. What Acts, Contracts, and Combinations Do Not Violate the Sherman Law.**—Acts, contracts, and combinations which promote, or only incidentally or indirectly restrict, competition in commerce among the States, while their main purpose and chief effect are to foster the trade and increase the business of those who make and operate them, are not in restraint of interstate commerce or violative of section 1 of the Sherman Law. *Ib.* 2—276
- 107. Section 1 of the Sherman Law makes a distinction between a contract and a combination or conspiracy in restraint of trade.** *Rice v. Standard Oil Co.*, 134 F., 464. 2—633
- 108. Contract for Sale of Goods by Member of Combination.**—The Sherman Law does not invalidate or prevent a recovery for the breach of a collateral contract for the manufacture and sale of goods by a member of a combination formed for the purpose of restraining interstate trade in such goods. *Hadley Dean Plate Glass Co. v. Highland Glass Co.*, 143 F., 242. 2—665

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- 109. Section 1 Includes Not Only Voluntary, but also Involuntary Restraints.**—Section 1 of the Sherman Law is not confined to voluntary restraints but includes involuntary restraints, as where persons not engaged in interstate commerce conspire to compel action by others or create artificial conditions, which necessarily affect and restrain such commerce. *U. S. v. Patten*, 226 U. S., 541. 4—757
- 110. The Phrase "Engage in Such Combination or Conspiracy," as Used in Section 1, Includes All Persons Who Engage in the Conspiracy.**—The phrase "engage in such combination or conspiracy," in section 1 of the Sherman Law, is used in a broad sense, and includes not only such persons as initiate a conspiracy, but also those who afterwards engage therein; and hence an indictment charging that defendants were engaged in a conspiracy among themselves to control and monopolize interstate commerce in the manufacture and sale of coaster brakes among the several States, followed by an allegation of overt acts tending to effectuate the conspiracy, was not defective for failure to charge directly the formation and existence of the conspiracy, the words "engage in," as so used, signifying to embark in, take part in, or enlist in, meaning substantially the same thing as to conspire. *U. S. v. New Departure Mfg. Co.*, 204 F., 111. 5—151
- 111. Same—Extent of Interstate Trade Conspired Against Is Immaterial, a Single Shipment Being Covered by the Law.**—Under the Sherman Law, section 1, relative to conspiracies in restraint of interstate commerce, the extent of the interstate trade or commerce conspired against is immaterial, and a conspiracy between the officers and agents of one competitor on its behalf to restrain a single interstate sale or shipment by another competitor is covered by it. *Patterson v. U. S.*, 222 F., 618. 5—90
- 112. Under Section 1, Defendants Who Conspire to Restrain Trade Between U. S. and Foreign Country Are Guilty, Though No Overt Acts Be Committed.**—Under section 1 of the Sherman Law, declaring that every conspiracy in restraint of trade or commerce among the several States or with foreign nations is illegal, defendants, who conspired to restrain trade between the United States and foreign nations, are guilty, though no overt acts were committed; such conspiracy being governed by the rules applicable to common-law conspiracy, which made the unlawful conspiring the gist of the offense. *U. S. v. Rintelen*, 233 F., 794. 6—526
- See also* INDICTMENTS, 5.

Section 2.

- 113. Monopolies.**—To constitute the offense of "monopolizing, or attempting to monopolize," trade or commerce among the

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- States, within the meaning of section 2 of the Sherman Law, it is necessary to acquire, or attempt to acquire, an exclusive right in such commerce by means which will prevent others from engaging therein. *In re Greene*, 52 F., 104. 1—55
114. Every attempt to monopolize a part of interstate commerce, the necessary effect of which is to stifle or to directly and substantially restrict competition in commerce among the States, violates section 2 of the Sherman Law. *Whitwell v. Continental Tobacco Co.*, 125 F., 454. 2—271
115. Same.—Attempts to monopolize a part of commerce among the States which promote, or only incidentally or indirectly restrict competition in interstate commerce, while their main purpose and chief effect are to increase the trade and foster the business of those who make them, were not intended to be and were not made illegal or punishable by section 2 of the Sherman Law, because such attempts are indispensable to the existence of any competition in commerce among the States. *Ib.* 2—276
116. "Any Part of Interstate Trade or Commerce" Embraces Trade of Prospective Purchasers of a Particular Commodity.—Within section 2 of the Sherman Law, prohibiting the monopolizing of any part of the trade or commerce among the several States, "any part of interstate trade or commerce" embraces the interstate trade or commerce of all prospective purchasers of a particular commodity in the United States, or in some particular portion thereof, but excludes the interstate trade or commerce of a particular prospective purchaser of a particular commodity. *Patterson v. U. S.*, 222 F., 621. 5—94
117. Party Monopolizing by Use of Wrongful Means, Does Not Continue to Monopolize by Holding on to Business Wrongfully Acquired, After Competitor Has Ceased to Compete.—A party monopolizing interstate commerce by employing wrongful means to drive its competitors from the field does not continue to monopolize such commerce, within § 2 of the Sherman Law, by holding the business so secured after its competitors have ceased to compete; and hence an indictment charging a monopolizing within the period of limitations by holding the business previously obtained by such wrongful means was insufficient, where it did not allege the doing of anything to maintain and hold the monopoly during such period. *Ib.* 5—101
118. "Monopolizing" by Efficiency in Production and Marketing, Not Within Section 2 of the Law.—A monopolizing of interstate trade and commerce by efficiency in producing and marketing a better and cheaper article than anyone else, is not within section 2 of the Sherman Law. *Ib.* 5—92
119. Same—One Competitor Monopolizes in Excluding Other Competitors from the Free Opportunity of Approaching Customers on

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Equal Terms.—While but one competitor can make a sale, and though there can be no monopolizing within section 2 of the Sherman Law, in making a single interstate sale, or a great number of sales, though wrongful means are used in making them, one competitor monopolizes interstate trade and commerce by excluding all or substantially all other competitors from the free opportunity of approaching each and every prospective purchaser on equal terms, or by driving them from the field of freely offering their goods, so as to have that field to himself. *Id.* 5—94

See also INDICTMENTS, 1; MONOPOLY.

Section 4.

- 120. Power of Congress to Authorize Injunction.**—The Sherman Law, section 4, which provides that the circuit courts of the United States have jurisdiction to restrain combinations, and conspiracies to obstruct and destroy interstate commerce, before such objects are accomplished, is not void for want of power in Congress to authorize such proceedings. *U. S. v. Elliott*, 64 F., 27. 1—311
- 121. Government Has Power to Bring Suit.**—Section 4 of the Sherman Law invests the Government with full power and authority to bring suit against the Trans-Missouri Freight Association; and, if the facts alleged are proved, an injunction should issue. *U. S. v. Trans-Mo. Ft. Assn.*, 166 U. S., 290. 1—649
- 122. Who May Sue to Restrain.**—The intention of the Sherman Law was to limit direct proceedings in equity to prevent and restrain such violations of that law as cause injury to the general public, or to all alike, merely from the suppression of competition in trade and commerce among the several States and with foreign nations, to those instituted in the name of the United States, under section 4 of the act, by district attorneys of the United States, acting under the direction of the Attorney General; thus securing the enforcement of the act, so far as such direct proceedings in equity are concerned, according to some uniform plan, operative throughout the entire country. *Minnesota v. Northern Securities Co.*, 194 U. S., 48. 2—533
- 123. The right to bring suits for injunction under section 4 of the Sherman Law** is limited to suits instituted on behalf of the Government. *Greer, Mills & Co. v. Stoller*, 77 F., 1. 1—820
- 124. Although the Sherman Law contains criminal provisions, the Federal court has power under section 4 of the act in a suit in equity to prevent and restrain violations of the act and may mold its decree so as to accomplish practical results such as law and justice demand.** *Northern Securities Co. v. United States*, 193 U. S., 197. 2—339

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- 125. Restraining Order—Notice.**—Under section 4 of the Sherman Law, a restraining order may be issued without notice under the circumstances sanctioned by the established usages of equity practice in other cases. *U. S. v. Coal Dealers' Assn. of Cal.*, 85 F., 252. 1—749
- 126. Injunction.**—A combination whose professed object is to arrest the operation of the railroads whose lines extend from a great city into adjoining States until such roads accede to certain demands made upon them, whether such demands are in themselves reasonable or unreasonable, just or unjust, is an unlawful conspiracy in restraint of trade and commerce among the States, within the Sherman Law, and acts threatened in pursuance thereof may be restrained by injunction under section 4 of the act. *U. S. v. Elliott*, 62 F., 801. 1—262
- See also* INJUNCTIONS, 19, 26, 27, 31.

Section 5.

- 127. Injunction Order—Persons Not Named in Bill.**—Under the Sherman Law, section 5, an injunction order in an action to enjoin an illegal conspiracy against interstate commerce may provide that it shall be in force on defendants not named in the bill, but who are within the terms of the order, where it also provides that it is operative on all persons acting in concert with the designated conspirators, though not named in the writ, after the commission of some act by them in furtherance of the conspiracy, and service of the writ on them. *U. S. v. Elliott*, 64 F., 27. 1—311
- 128. The authority given by section 5 of the Sherman Law to bring in non-residents of the district can not be availed of in private suits, and the court can acquire no jurisdiction over them.** *Greer, Mills & Co. v. Stoller*, 77 F., 1. 1—620
- See also* INJUNCTIONS, 18.

Section 6.

- 129. Forfeiture of Property.**—The provision of the Sherman Law, section 6, for forfeiture of "any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in this act, and being in the course of transportation from one State to another or to a foreign country," does not imply that only cases in which property shall be found subject to forfeiture shall be deemed within the scope of the act. *U. S. v. Debs*, 64 F., 724. 1—322
- 130. Seizure of goods in course of transportation pursuant to the unlawful contract can only be made under the sixth section of the Sherman Law, which authorizes seizures and condemnation by like proceedings to those provided in cases of property imported into the United States contrary to law.** *U. S. v. Addyston Pipe & Steel Co.*, 85 F., 301. 1—814

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131. There can be no such seizure in a suit in equity brought by the United States under the Sherman Law to enjoin the carrying out of a contract or combination in restraint of interstate commerce. *Ib.* 1—814

Section 7.

132. Necessary Parties—Jurisdiction of Federal Courts.—Where a person brings an action under section 7 of the Sherman Law against the officials of a State to recover damages for acts done under authority of a State statute which gives the State an entire monopoly of the traffic in intoxicating liquors (act S. C., Jan. 2, 1895), the State itself is a necessary party thereto, and consequently the Federal courts would have no jurisdiction of the action. *Lowenstein v. Evans*, 69 F., 908. 1—598
133. A municipal corporation engaged in operating water, lighting, or similar plants, from which a revenue is derived, is, in relation to such matters, a business corporation, and may maintain an action under section 7 of the Sherman Law for "injury to its business" by reason of a combination or conspiracy in restraint of interstate trade or commerce made unlawful by such act. *City of Atlanta v. Chattanooga Foundry & Pipe Works*, 127 F., 23. 2—299

Affirmed, 203 U. S., 390.

134. Same—Who Liable.—Every member of such an illegal combination is liable for the injury resulting to the business or property of a plaintiff by reason of such combination, regardless of any contract relation between the plaintiff and defendant. *Ib.* 2—304
135. Does Not Authorize an Action for Damages by Party to the Trust.—Section 7 of the Sherman Law, giving to any person injured by any other person or corporation by reason of anything forbidden in the act the right to recover treble damages, does not authorize an action against an alleged trust corporation by one who was a party to its organization and a stockholder therein to recover damages resulting from the enforcement by defendant of rights given it by the alleged unlawful agreement. *Bishop v. American Preservers Co.*, 105 F., 845. 2—51

Affirming 51 F., 272 (1—49).

136. For an action for recovery under this section brought under this section against an association of manufacturers of and dealers in tiles, mantels, and grates, where the party suing was not a member of the association, and the sales were made within the State, see *Montague v. Lowry*, 193 U. S., 38. 2—327
137. Attorneys' Fees.—The discretion of the trial court under the Sherman Law, section 7, to allow a reasonable attorney's fee to the successful plaintiff in an action brought under

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that section to recover damages for a violation of the provisions of that act against combinations in restraint of trade, is not abused by an allowance of \$750, although the verdict was for but \$500, where the trial took five days, and from the proof offered it appeared that from \$750 to \$1,000 would be a reasonable sum. *Ib.* 2—337

138. A recovery of the treble damages authorized by the Sherman Law, section 7, in case of injury sustained by violation of the act, can be had only by direct action, and not by way of set-off in an action brought for the price of goods by a company illegally formed in violation of the act, especially when the State practice does not permit the set-off of unliquidated damages. *Connolly v. Union Sewer Pipe Co.*, 184 U. S., 540. 2—118

139. A declaration in a suit based on section 7 of the Sherman Law to recover damages resulting to plaintiff from a violation of such provision, which alleges in a single count that defendant entered into a "contract, combination, and conspiracy" in restraint of trade, is bad for duplicity. *Rice v. Standard Oil Co.*, 134 F., 464. 2—633

140. The pendency of a suit in a State court can not be pleaded in abatement of an action in a circuit court of the United States to recover treble damages under section 7 of the Sherman Law, since the State court is without jurisdiction to enforce the remedy given by said section, and therefore the same case can not be depending in both courts. *Loewe v. Lawlor*, 130 F., 633. 2—563

141. Limitation.—An action under section 7 of the Sherman Law, providing that "any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any circuit court of the United States, * * * and shall recover threefold the damages by him sustained," is not an action for a penalty or forfeiture within Revised Statutes, section 1047, prescribing a limitation of five years for a "suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States," but one for the enforcement of a civil remedy for a private injury, compensatory in its purpose and effect, the recovery permitted in excess of damages actually sustained being in the nature of exemplary damages, which does not change the nature of the action, and such action is governed as to limitation by the statutes of the State in which it is brought. *City of Atlanta v. Chattanooga Foundry & Pipe Co.*, 101 F., 900. 2—11

Affirmed, 127 F., 23 (2—299).

Affirmed, 203 U. S., 390.

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Section 8.

- 142. The Word "Associations," as Used in Section 8, Includes Unincorporated Associations, Such as a Labor Organization, Which May Be Sued by Its Name in Action for Damages.**—In the Sherman Law, section 8, providing that the word "person" or "persons," whenever used in the act, shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country; the word "associations" includes unincorporated associations, such as labor organizations recognized by Federal and State legislation as lawful, and such an organization may be sued by its name, under section 7, by one injured in his business or property by its action in violation of the provisions of the act. *Dowd v. United Mine Workers of America*, 235 F., 4. 6—653

FOR COMBINATIONS, ETC., PROHIBITED, *see* COMBINATIONS, CONSPIRACIES, CONTRACTS, ETC., IN RESTRAINT OF TRADE, II.

FOR COMBINATIONS, ETC., NOT WITHIN THE STATUTE, *see* COMBINATIONS, CONSPIRACIES, CONTRACTS, ETC., IN RESTRAINT OF TRADE, III.

FOR ACTIONS, DEFENSES, OR PARTIES, *see* ACTIONS AND DEFENSES; AND PARTIES.

FOR JURISDICTION OF FEDERAL COURTS, *see* COURTS.

FOR DAMAGES, *see* ACTIONS AND DEFENSES, 58-84; AND DAMAGES.

II. THE CLAYTON ANTI-TRUST ACT.

Act of October 15, 1914; 38 Stat., 730.

- 143. Section 3, Making Unlawful Agreements Which Forbid Use of Goods or Machinery of a Competitor of the Lessor or Seller, Is a Valid Law.**—Section 3 of the Clayton Law, making it unlawful for any person engaged in commerce, in the course of such commerce, to lease or sell goods, machinery, etc., on any condition, agreement, or understanding that the lessee or purchaser shall not use or deal in goods or machinery of a competitor of the lessor or seller, where the effect may be to substantially lessen competition or tend to create a monopoly, as applied to leases made in the conduct of interstate business, is within the constitutional power of Congress. *U. S. v. United Shoe Mach. Co.*, 234 F., 143.

5—817

- 144. Prohibits Leases With Tying Clauses, Under Which Lessee Is to Use Machines of, and to Purchase Repairs and Supplies From, the Lessor.**—Leases, by the maker of a very large percentage of all the shoe machinery made in the United States, of machines to shoe manufacturers, consisting of principal and auxiliary machines, the use of both kinds being necessary

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in the completion of a shoe, which leases contain provisions that the lessee shall not use the machine in the manufacture of footwear which has not had certain essential operations performed upon it by other machines leased from the lessor, that he shall use the leased machines exclusively for the class of work for which it is designed, that he shall obtain all duplicate parts and all supplies for the machine exclusively from the lessor at such prices as it may establish and other similar provisions, and which further give the lessor the right to remove all leased machines in the event of the violation by the lessee of any term of any one of the leases, *Held*, on motion for preliminary injunction, illegal, as in violation of the Clayton Law. *U. S. v. United Shoe Mach. Co.*, 227 F., 508. 5—786

145. Same—Is Applicable to a Continuing Contract of Lease, Although Made Before the Passage of the Act.—Section 3 of the Clayton Law, which makes it unlawful to lease or sell machinery, etc., on any condition or agreement which will tend to prevent the lessee or purchaser from dealing with competitors of the lessor or seller. Is applicable to a continuing contract of lease, although made before its passage. *Ib.* 5—789.

146. Is Applicable to Continuing Leases, Although Made Before Its Passage.—The Clayton Law, which makes it unlawful to lease or sell machinery, etc., on any condition or agreement which will tend to prevent the lessee or purchaser from dealing with competitors, is applicable to a continuing contract of lease, although made before its passage. *Elliott Machine Co. v. Center*, 227 F., 126. 5—941

147. The Refusal of a Manufacturer of an Unpatented Article to Sell to a Dealer Who Resells at Less Than Regular Prices Not a Violation of the Clayton Law.—The refusal of the manufacturer of an unpatented food product, which is not a necessity of life or even a staple article of trade, who has a monopoly only because of the trade name under which it is sold, it being open to anyone else to make and sell the same article under any other name which does not infringe such trade name, to sell to a dealer who resells at retail at less than the regular price charged by other retailers and a price which gives to the retailer no profit, while to an extent it lessens competition, is not an unreasonable "restraint of trade," nor is it unlawful under the Clayton Law as a price discrimination, the effect of which "may be to substantially lessen competition or tend to create a monopoly," so as to entitle the would-be purchaser to relief by injunction under section 16 of the act; but, on the contrary, the effect of such an injunction would be to restrain trade by making it impossible for competitors to handle the article, except at a loss, and to give

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such purchaser a monopoly. *Great Atl. & Pac. Tea Co. v. Cream of Wheat Co.*, 224 F., 571. 5—866

148. Same—Refusal of Manufacturer to Sell His Product to a Dealer Who Uses it in a Manner Which Lessens the Trade of the Maker Not a Violation of the Clayton Law.—Construing together the provisions of section 2 of the Clayton Law, the last proviso in effect authorizes persons engaged in selling goods in interstate commerce to select their own bona fide customers, provided the effect of such selection is not to substantially and unreasonably restrain trade; and the refusal of a manufacturer to sell its product to a dealer who avowedly uses it in a manner which injures and lessens the trade of the maker can not be said to be an unreasonable restraint of trade nor a violation of the statute. *Ib.* 5—871
149. Has Not Changed the Rule That a Trader May Refuse to Deal With Any Proposing Buyer.—Neither the Clayton Law nor the Sherman Law has changed the rule that a trader may reject the offer of a proposing buyer for any reason that appeals to him, whether it be because he does not like the buyer's business methods or because of some personal difference. *Great Atl. & Pac. Tea Co. v. Cream of Wheat Co.*, 227 F., 49. 5—877
150. Refusal of a Manufacturer to Sell Only to Its Licensed Bottlers Not a Violation of the Clayton Law.—The refusal of a manufacturer to sell its sirup for bottling to a party other than its licensed bottlers, and to permit such party to use its trade-mark in connection with the bottled product, was not a violation of the Clayton Law, providing that it shall be unlawful to sell goods for use or resale, or to fix a price therefor, or discount or rebate from such price on the condition that the purchaser shall not use the goods of a competitor, where the effect may be to substantially lessen competition or to create a monopoly in any line of commerce, in view of the possibility of adulteration and the hardship to the manufacturer of maintaining such supervision over the bottling as it deemed necessary, if required to sell to every intending purchaser. *Coca-Cola Co. v. Butler & Sons*, 229 F., 233. 6—414
151. Manufacturer of Motion-Picture Projecting Machine Can Not Require Purchaser or Lessee to Use Films Manufactured by it, Its Patent for Films Having Expired.—Under the Clayton Law, making it unlawful to lease or sell goods, machinery, or supplies on a condition that the lessee or purchaser shall not use or deal in the goods, machinery, or supplies of a competitor of the lessor or seller, where such condition may subsequently lessen competition and create a monopoly, complainant, who by virtue of patents had a monopoly for the manufacture of motion-picture projecting machines, can not,

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In selling or leasing such machines require the purchaser to use films manufactured by it, its letters patent for films having expired, and such a contract is invalid as tending to create a monopoly. *Motion Picture Pat. Co. v. Universal Film Co.*, 235 F., 400. 6—643

152. Same—Act Applies to Contracts Made Before Its Passage.—The Clayton Law, leveled at monopolies, applies to contracts entered into before its enactment. *Ib.* 6—644

153. Same—Law Applies, Though Acts of Restraint Occurred in the State in Which the Contract Was Made.—Where a contract involved and restrained interstate commerce, the Clayton Law is applicable, though the particular acts of restraint and infringement occurred in the State of New York where the contract was made. *Ib.* 6—644

154. Under Section 16 of the Clayton Law, Private Parties Can Obtain Injunction Against Threatened Loss.—While under section 16 of the Clayton Law private parties can obtain an injunction against threatened loss that act in terms goes no farther. *Fleitmann v. Welsbach Street Lighting Co.*, 240 U. S., 29. 5—431

155. Same—Under Clayton Law, Test of Lawfulness of Acts in Case of Strike.—Within the Clayton Law, section 20, providing that no injunction in any case between employer and employees shall prohibit any person from terminating the relations of employment, or from recommending or persuading others by peaceful means so to do, or from attending at any place where they may lawfully be for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or abstain from work, or from ceasing to patronize or employ any party, the test whether the act is lawful is the question whether it would be lawful if no strike existed, and no action having in it the element of intimidation, coercion, or abuse, physical or verbal, or of invasion of rights of privacy, nor any act or speech which a fair-minded man may reasonably judge to be intended to convey insult, threat, or annoyance to another, or to work abuse upon him, is lawful. *Stephens v. Ohio State Tel. Co.*, 240 F., 771. 6—937

156. Same—Striking Employees Can Not Interfere With Business of Telephone Company.—Striking employees of a telephone company, which is a public utility whose first duty is to serve the public, can not lawfully interfere, under the Clayton Law, with the business of the company, if it can find people willing to work for it, since, if it can find laborers, it must employ them and fulfill its public duties. *Ib.* 6—942

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III. IMMUNITY STATUTES.

Act of February 11, 1893s 27 Stat., 443.

157. **Immunity of Witnesses.**—Act of February 11, 1893 (27 Stat., 443), providing that no person shall be excused from testifying in a proceeding growing out of an alleged violation of an act to regulate interstate commerce, approved February 4, 1887, on the ground that his testimony will tend to incriminate him, and that no person shall be prosecuted, etc., on account of anything concerning which he may testify in such proceedings, applies only to proceedings connected with the act of February 4, 1887, and does not apply to a prosecution for violation of the Sherman Law so as to abrogate in relation thereto the Fifth Amendment to the Constitution, providing that no person shall be compelled in a criminal case to be a witness against himself. *Foot v. Buchanan*, 113 F., 156. 2—104
158. The act of February 11, 1893 (27 Stat., 443), which is supplementary to the Interstate Commerce Act, provides that "no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, before said Commission or in obedience to its subpoena * * * or in any such case or proceeding." *U. S. v. Armour & Co.*, 142 F., 808. 2—951
159. **Construction of the Immunity Act.**—The immunity act, Feb. 11, 1893, c. 27, Stat., 443, which relates to evidence given in Government investigations, and provides that "no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, * * *" was enacted to satisfy the demand of the fifth constitutional amendment, and does so by affording the witness absolute immunity from future prosecution for any offense arising out of the transactions to which his testimony relates, and which might be aided, directly or indirectly, thereby, so as to leave no ground on which the constitutional privilege may be invoked. It operates as an act of general amnesty for all such offenses; but it is not intended to be, and cannot be made, a shield against prosecution for offenses committed after the testimony is given or the evidence furnished, since a person cannot be said to have been a witness against himself in respect to an offense which had not been committed when the testimony was given. *U. S. v. Swift*, 186 F., 1017. 4—76
160. The immunity statute governing the giving of testimony before the Commissioner of Corporations is the act Feb. 11, 1893, c. 83, 27 Stat., 443, which was expressly made applicable in

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such cases by the act Feb. 14, 1903, c. 552, § 6, 32 Stat., 827, creating the Department of Commerce and Labor. *Ib.* 4—63

- 161. Immunity Not Extended to Persons Called by Defense in Civil Cases.**—The immunity act of Feb. 25, 1903, c. 755, 32 Stat., 904, as amended by act June 30, 1906, c. 3920, 32 Stat., 798, provides that for the enforcement of the provisions of the act a specified sum was appropriated to employ special counsel to conduct proceedings, suits, and prosecutions thereunder, provided that no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he might testify in any proceeding, suit, or prosecution under the act, etc. *Held* that, though the act applies to witnesses, whether called in a criminal or a civil suit, it did not extend immunity to witnesses called by the defense in a civil suit to restrain alleged violations of the act, especially to defendants called by co-defendants, the effect of which would be to render the statute abortive. *U. S. v. Standard Sanitary Mfg. Co.*, 187 F., 236. 4—262

- 162. Confers Immunity Only Where Evidence is Given Under Compulsion.**—Under the act of February 11, 1903 (24 Stat., 443), conferring immunity as to matters testified to before the Interstate Commerce Commission, such immunity is only conferred where the witness would have been privileged under Const. U. S., Amend. 5, and where such evidence is given under compulsion; but where the evidence is given without assertion of the constitutional privilege, or is declined to be given on any ground other than because of its incriminating tendency, immunity is not conferred, the statute having been passed with regard to the prior construction of the Fifth Amendment, under which an assertion of privilege is necessary. *U. S. v. Ellison*, 222 F., 435 5—840

Act of February 19, 1903; 32 Stat., 848.

- 163. Immunity of Witnesses—Anti-Trust Act—Inquisitions.**—An inquisition before a grand jury to determine the existence of supposed violations of the Sherman Law was a "proceeding" within act of Congress, February 19, 1903 (ch. 708, 32 Stat., 848), providing that no person shall be prosecuted or subjected to any penalty for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence in any "proceeding" under several statutes mentioned, including such Sherman Law. *In re Hale*, 139 F., 496. 2—804

Act of February 25, 1903; 32 Stat., 903.

- 164. The examination of witnesses before a grand jury concerning an alleged violation of the Sherman Law is a "proceeding"**

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within the meaning of the proviso to the act of February 25, 1903 (32 Stat., 854-903), that no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence in any proceeding, suit, or prosecution under certain named statutes of which the Sherman Law is one. *Hale v. Henkel*, 201 U. S., 66.

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165. The right of a witness to claim his privilege against self-incrimination, afforded by the fifth amendment to the Constitution, when examined concerning an alleged violation of the Sherman Law, is taken away by the proviso to the act of February 25, 1903 (32 Stat., 904), that no person shall be prosecuted or be subjected to any penalty or forfeiture for or account of any transaction, matter, or thing concerning which he may testify or produce evidence in any proceeding, suit, or prosecution under certain named statutes of which the Sherman Law is one, which furnishes a sufficient immunity from prosecution to satisfy the constitutional guaranty, although it may not afford immunity from prosecution in the State courts for the offense disclosed. [See also *Nelson v. United States*, 201 U. S., 92 (2—920).] *Ib.* 2—897
166. Immunity Provision.—The appropriation act of February 25, 1903 (32 Stat., 904), making provision for the enforcement of the Interstate Commerce and Anti-Trust Laws, contains an immunity provision relating to persons giving testimony or producing evidence in any proceeding, suit, or prosecution under said laws. *U. S. v. Armour & Co.*, 142 F., 808. 2—952
167. Immunity Statute—Officer Producing Records of Corporation Not Entitled to Immunity.—Testimony given by an officer of a corporation before a Federal grand jury investigating charges of violation of the Sherman Law by the corporation, which consisted in statements of facts shown by the records of the corporation which he produced in obedience to a subpoena duces tecum, does not entitle him to immunity from prosecution for an offense against the United States committed in his official capacity, but which has no connection with the matter then being investigated under the Immunity Act of February 25, 1903, which provides with respect to the Sherman Law and others mentioned that “no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under said acts.” *Heike v. U. S.*, 192 F., 87. 4—444
168. Same—Statements compiled by employees of a corporation from its books and records, which were before a grand jury and produced to the grand jury by an officer of the corporation

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on a subpoena duces tecum, do not constitute testimony given or documentary evidence produced by such officer within the meaning of the Immunity Act of February 25, 1903, which grants immunity in certain cases to a witness "on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise," the preparation or production of statements in such case being the act of the corporation, and not of the witness. *Ib.* 4—448

IV. COMMERCE AND LABOR ACT.

Act of February 14, 1903; 32 Stat., 825.

169. The primary purpose of Commerce and Labor Act of February 14, 1903 (32 Stat., 825), was legislative, to enable Congress, by information secured through the work of officers charged with the execution of that law to pass such remedial legislation as might be found necessary, and the act must be construed in view of such purpose. *United States v. Armour & Co.*, 142 F., 819. 2—964
170. Commissioner of Corporations.—Investigation of Corporations or Combinations.—Section 6 of that act (32 Stat., 827), defining the powers and duties of the Commissioner of Corporations, requiring him to make investigation into the organization, conduct, and management of the business of all corporations or combinations engaged in interstate or foreign commerce other than common carriers, and giving him the same powers in that respect as is conferred on the Interstate Commerce Commission with respect to carriers, including the power to subpoena and compel the attendance of witnesses, and to administer oaths and require the production of documentary evidence, contemplates that he shall proceed by private hearings; and, having such powers, a person who appears before him on his demand or by his request and gives testimony or produces documents, although not sworn, is entitled to the same privileges and immunities as though his attendance was compelled by subpoena and his testimony given under oath. *Ib.* 2—968
171. Same—Immunity.—Section 6 (32 Stat., 827) requires the Commissioner of Corporations to investigate all corporations and combinations engaged in interstate or foreign commerce, except common carriers, and provides that "all the requirements, obligations, liabilities, and immunities imposed or conferred by said 'Act to regulate commerce' and by 'An act in relation to testimony before the Interstate Commerce Commission' * * * shall also apply to all persons who may be subpoenaed to testify as witnesses or to produce documentary evidence in pursuance of the authority conferred by this section." *Ib.* 2—967

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V. INTERSTATE COMMERCE ACT.

Act of February 4, 1887; 24 Stat., 319.

- 172. Public Policy.**—The act of February 4, 1887, entitled "An act to regulate commerce," demonstrates the fact that from the date of the passage of that act it has been the public policy of this Nation to regulate that part of interstate commerce which consists of transportation, and to so far restrict competition in freight and passenger rates between railroad companies engaged therein as shall be necessary to make such rates open, public, reasonable, uniform, and steady and to prevent discriminations and undue preferences. *U. S. v. Trans-Mo. Ft. Assn.*, 58 F., 58. 1—186
- Case reversed, 166 U. S., 290 (1—648).
- 173. Not Inconsistent with Sherman Law.**—The act of February 4, 1887 (24 Stat., 379), "to regulate commerce," is not inconsistent with the Sherman Law, as it does not confer upon competing railroad companies power to enter into a contract in restraint of trade and commerce like the one which forms the subject of this suit. *U. S. v. Trans-Mo. Ft. Assn.*, 166 U. S., 290. 1—648
- 174. Express Companies.**—The Interstate Commerce Act does not apply to independent express companies not operating railway lines. *Southern Ind. Exp. Co. v. U. S. Exp. Co.*, 88 F., 659. 1—862
- 175. Purpose of the Act to Establish Tribunal for Regulating Conduct of Common Carriers.**—The purpose of the Interstate Commerce Law is to establish a tribunal to determine the relation of communities, shippers and carriers, and their respective rights and obligations dependent upon the act, and the conduct of carriers is not subject to judicial review in criminal or civil cases based on alleged violations of the act until submitted to and passed on by the Commission. *U. S. v. Pacific & Arctic R. & N. Co.*, 228 U. S., 104. 5—230
- 176. Telephone Companies Required to Furnish Reasonable Service.**—A suit by the subscribers of an interstate telephone company, to require it to repair its appliances and thereafter to keep them in a good state of repair and in condition for operation, is not beyond the jurisdiction of the court, as asking the court to undertake administrative or legislative functions. *Stephens v. Ohio State Tel. Co.*, 240 Fed., 769. 6—934

VI. PACIFIC RAILROAD ACTS.

Acts of July 1, 1862 (12 Stat., 489); July 2, 1864 (13 Stat., 359); June 20, 1874 (18 Stat., 111).

- 177. Through Joint Rates—Option of Carriers to Establish.**—Prior to the passage of the Hepburn Act (act June 29, 1906, c. 3591, 34 Stat., 584) in 1906 connecting railroads were free to adopt

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or refuse to adopt joint through tariff rates, and this freedom was not abridged, as between the Union Pacific Railroad Company and the Central Pacific Railroad Company, by either section 12 of act July 1, 1862, c. 120, 12 Stat., 495, requiring the roads of such companies to be operated as one continuous line, so far as the public or the Government are concerned, or section 15 of act July 2, 1864, c. 216, 13 Stat., 362, which requires them to afford and secure to each equal advantages and facilities as to rates, time, and transportation without discrimination. *U. S. v. Union Pacific R. Co.*, 188 F., 111, 113. 4—316, 318

178. **Not Violated by Lease of Lines of Central Pacific to Southern Pacific.**—The Pacific Railroad Acts (act July 1, 1862, c. 120, 12 Stat., 489; act July 2, 1864, c. 216, 13 Stat., 356; act June 20, 1874, c. 331, 18 Stat., 111) requiring the Central Pacific Railroad to maintain physical connection with the Union Pacific, to make a through line and to furnish equal advantages and facilities as to rates, time, and transportation, were not violated by the lease of the lines of the Central Pacific to the Southern Pacific, and the subsequent purchase by the latter of the stock of the former, so long as the statutory requirements were observed. *U. S. v. Southern Pacific Co.*, 239 F., 1006. 6—857

VII. THE EXPEDITING ACT.

Act of February 11, 1903; 32 Stat., 823.

179. **The Expediting Act of February 11, 1903 (32 Stat., 823),** providing that in any equity suit, in any Federal circuit court, to protect trade and commerce against unlawful restraints and monopolies, the Attorney General may file a certificate of importance, whereupon the case shall be given precedence, and shall be heard by not less than three circuit judges, or, if there are only two circuit judges in the circuit, then before them and such district judge as they select, though discriminatory, is not unconstitutional. *U. S. v. N. Y., N. H. & H. R. Co.*, 165 F., 748. 3—533
180. **Not Repealed by the Judicial Code.**—The special provisions of the Expedition Act of 1903, requiring in a particular class of cases the organization of a court constituted in a particular manner, were not repealed by the Judicial Code of 1911. *Ex parte U. S., Petitioner*, 226 U. S., 424. 4—510
181. **Court Organized Under Act May Carry Out Decree.**—Under the Expedition Act of 1903 a court composed as required by that act may be organized at the request of the United States to consider the plan to carry out the decree of the Supreme Court holding a combination unlawful under the Sherman Law. *Ib.* 4—511

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182. **How District Judge Prevented from Entering Decree.**—The district judge having refused to organize a court under the Expedition Act to determine the form of decree to be entered under the mandate of the Supreme Court, the latter court will issue its writ of prohibition directed to the district judge against entering a decree. *Ib.* 4—511

VIII. THE CRIMINAL APPEALS ACT.

Act of March 2, 1907; 34 Stat., 1246.

183. **Not Repealed by the Judicial Code.**—The Criminal Appeals Act of 1907 was not repealed by the Judicial Code, since the former act is not mentioned among the statutes expressly repealed by section 297 of the Code, is not superseded by any other regulations of the matter, and is a special provision. *U. S. v. Winslow*, 227 U. S., 218; 57 L. Ed., 481. 5—213
184. **The only question before the Federal Supreme Court on an appeal taken under the criminal appeals act of March 2, 1907, from a judgment sustaining a special plea in bar when the defendant has not been put in jeopardy is whether such plea in bar can be sustained.** *U. S. v. Kissel*, 54 L. Ed., 1168. 3—822
185. **Under the Criminal Appeals Act of March 2, 1907, when the indictment is quashed this court is confined to a consideration of the grounds of decision mentioned in such statute, *United States v. Keitel*, 211 U. S. 370, and there is a similar limit when the case comes up from a judgment sustaining a special plea in bar.** *U. S. v. Kissel*, 218 U. S., 606. 3—822
186. **Whether an indictment charges a continuing conspiracy with technical sufficiency is not before the court on an appeal taken under the Criminal Appeals Act from a judgment sustaining special pleas of limitation in bar.** *Ib.* 3—822
187. **In Reviewing Decision of Lower Court Sustaining Demurrer to Indictment Under the Sherman Law, What Supreme Court Will Not Consider.**—In reviewing the decision of the lower court sustaining a demurrer to an indictment charging a combination in violation of the Sherman Law, the Supreme Court is not called upon to consider what the elements of the plan may be independently, or whether there is or is not a standard of reasonableness which juries may apply. If a criminal violation of the act is charged, the criminal courts have cognizance of it with power of decision in regard thereto. *U. S. v. Pacific & Arctic R. & N. Co.*, 228 U. S., 105. 5—230
188. **Same—Where District Court Holds Indictment Insufficient as Against Certain Defendants, it Construes the Indictment and Not the Statute, Which Decision Supreme Court is Without Power to Review.**—Where the district court holds that the averments of the indictment are not sufficient to connect certain defendants with the offense charged, it construes the indictment and not the statute on which it is based, and

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the Supreme Court has no jurisdiction under the Criminal Appeals Act to review the decision. *Ib.* 5—233

189. Jurisdiction of Supreme Court on Appeal.—On appeal under the Criminal Appeals Act of March 2, 1907, the Supreme Court must accept the lower court's construction of the counts of the indictment, and its jurisdiction is limited to considering whether the decision of the court below that the acts charged are not criminal is based upon an erroneous construction of the statute alleged to have been violated. *U. S. v. Patten*, 226 U. S., 535. 4—752

IX. THE PATENT LAWS.

190. Question Whether Patentee Has Reserved Rights by License Restriction, is One Under Patent Laws.—An action by the patentee of a Rotary mimeograph sold under a license restriction that such machine should be used only with the stencil paper, ink, and other supplies made by the patentee, none of which are patented, against one selling ink to the purchaser with the expectation that it would be used in connection with such mimeograph, is one arising under the patent laws, of which a Federal court has jurisdiction. *Henry v. A. B. Dick Co.*, 56 L. Ed., 645. 6—743
191. Patent Law Should Not Be Extended by Judicial Construction.—While the patent law should be fairly and liberally construed to effect the purpose of Congress to encourage useful invention, the rights and privileges which it bestows should not be extended by judicial construction beyond what Congress intended. *Bauer & Cie v. O'Donnell*, 229 U. S., 10. 6—803
192. Same—Word "Vending," in Copyright and Patent Statutes, to All Intents the Same.—The words "vend" and "vending," as used in section 4952, Revised Statutes, in regard to the copyright protection accorded authors and as used in section 4884, Revised Statutes, in regard to the protection accorded inventors for their patented articles, are substantially the same, and the protection intended to be secured to authors and inventors is substantially identical. *Ib.* 6—805
193. Right to Make Invented Articles Existed Before Patent Law.—The right to make, use, and sell an invented article existed without, and before, the passage of the patent law; the act secured to the inventor the exclusive right to make, use, and vend the thing patented. *Ib.* 6—803
194. Same—In Framing, Congress Did Not Use Technical Phrases.—In framing the patent act and defining the rights and privileges of patentees thereunder Congress did not use technical or occult phrases, but in simple terms gave the patentee the exclusive right to make, use, and vend his invention for a definite term of years. *Ib.* 6—803

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- 195. In What Respect It Differs from Copyright Law.**—The patent law differs from the copyright law in that it not only confers the right to make and sell, but also the exclusive right to use the subject-matter of the patent. *Ib.* 6—808
- 196. Same—Right Given by, Should Be Protected.**—The right given by the patent law to the inventor to use his invention should be protected by all means properly within the scope of the statute, and the patentee may transfer a patented article with a qualified title as to its use. (*Henry v. Dick*, 224 U. S., 1.) *Ib.* 6—803
- 197. Same—Right to Vend Conferred by, Does Not Include Right to Control Resale Price.**—Where the transfer of the patented article is full and complete an attempt to reserve the right to fix the price at which it shall be resold by the vendee is futile under the statute. It is not a license for qualified use but an attempt to unduly extend the right to vend. *Henry v. Dick Co.*, 224 U. S., 1, distinguished. *Ib.* 6—808
- 198. Patentee Receives Nothing from, Except Right to Restrain Others from Using His Invention.**—In determining how far the owner of a patent may restrict the use after sale of machines embodying the invention, weight must be given to the rules long established that the scope of every patent is limited to the invention as described in the claims, read in the light of the specification, that the patentee receives nothing from the patent law beyond the right to restrain others from manufacturing, using, or selling his invention, and that the primary purpose of that law is not to create private fortunes but is to promote the progress of science and the useful arts. *Motion Picture Pat. Co. v. Universal Film Mfg. Co.*, 243 U. S., 510. 6—828
- 199. Same—Purpose of, to Promote Science; Not to Create Private Fortunes.**—The primary purpose of the patent law is not to create private fortunes, but to promote the progress of science and the useful arts. *Ib.* 6—829
- 200. Same—Extent to Which Use of Patented Article May Be Restricted Is Question Outside of Patent Law.**—The extent to which the use of a patented machine may validly be restricted to specific supplies or otherwise by special contract between the owner of the patent and a purchaser or licensee, is a question outside of the patent law and not involved in this case. *Ib.* 6—830

X. THE COPYRIGHT LAW.

- 201. Does Not Authorize Agreements in Violation of the Sherman Law.**—No more than the patent statute, was the copyright act intended to authorize agreements in unlawful restraint of trade and tending to monopoly in violation of the Sherman Law. *Straus v. American Pub. Assn.*, 231 U. S., 234. 4—854

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- 202. Same—Does Not Authorize Monopoly by Publishers and Sellers of Copyright Books.**—The copyright monopoly conferred by the Federal laws does not protect, as against condemnation under the Sherman Law, agreements between associations embracing probably 75 per cent of the book publishers and a majority of the booksellers in the United States, which operate to restrict the sale of copyrighted books to those only who will maintain the fixed net retail price, and result in almost completely destroying competition in such books at retail. *Id.*, 58 L. Ed., 192. 4—854

XI. REVISED STATUTES.

- 203. Section 725.**—Where an injunction had been issued and served upon the defendants, the circuit court had authority to inquire whether its orders had been disobeyed, and when it found that they had been disobeyed to proceed under Revised Statutes, section 725, and to enter the order of punishment complained of. *In re Debs*, 158 U. S., 504. 1—506
- 204. Section 1047.**—An action under section 7 of the Sherman Law to recover threefold the damages is not an action for a penalty or forfeiture within Revised Statutes, section 1047, prescribing a limitation of five years for a "suit or prosecution for any penalty or forfeiture, pecuniary or otherwise, accruing under the laws of the United States," but one for the enforcement of a civil remedy for a private injury, compensatory in its purpose and effect, the recovery permitted in excess of damages actually sustained being in the nature of exemplary damages, which does not change the nature of the action, and such action is governed as to limitation by the statutes of the State in which it is brought. *Atlanta v. Chattanooga Foundry & Pipe Co.*, 101 F., 900. 2—11
- Affirmed, 127 F., 23 (2—209).
- Affirmed, 203 U. S., 290 (3—113).
- 205. Section 3995—Obstructing the Mails.**—Although the law, which now appears in Revised Statutes, section 3995, and which makes it an offense to obstruct and retard the passage of the United States mails, was originally passed prior to the introduction into the United States of the method of transporting mail by railroads, and the phraseology of the law conforms to conditions prevailing at that time (Mar. 3, 1825), yet it is equally applicable to the modern system of conveyance and protects alike the transportation of the mail by the "limited express" and by the old-fashioned stage-coach. *U. S. v. Cassidy*, 67 F., 703. 1—457
- 206. Same.**—The statute applies to all persons who "knowingly and willfully" obstruct and retard the passage of the mails or the carrier carrying the same; that is, to those who know

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that the acts performed, however innocent they may otherwise be, will have the effect of obstructing and retarding the mail, and who perform the acts with the intent that such shall be their operation. *U. S. v. Kirby*, 7 Wall., 485, cited. *Ib.* 1—458

207. *Same.*—The statute also applies to persons who, having in view the accomplishment of other purposes, perform unlawful acts, which have the effect of obstructing and retarding the passage of the mails. In such case an intent to obstruct and retard the mails will be imputed to the authors of the unlawful act, although the attainment of other ends may have been their primary object. *U. S. v. Kirby*, 7 Wall., 485, cited. *Ib.* 1—458

208. *Section 5440—Conspiracy.*—Construing several clauses of the interstate commerce law recited in the opinion with section 5440 of the Revised Statutes it follows that a combination of persons, without regard to their occupation, which will have the effect to defeat the provisions of the interstate commerce law, inhibiting discriminations in the transportation of freight and passengers, and further to restrain the trade or commerce of the country, will be obnoxious to the penalties therein described. *Waterhouse v. Comer*, 55 F., 149. 1—119

209. *Same.*—The statute relating to conspiracies to commit offenses against the United States (Rev. Stat., sec. 5440) contains three elements which are necessary to constitute the offense. These are: (1) The act of two or more persons conspiring together; (2) to commit any offense against the United States; (3) the overt act, or the element of one or more of such parties doing any act to effect the object of the conspiracy. *U. S. v. Cassidy*, 67 F., 698. 1—149

XII. STATE LAWS.

210. *The Anti-Trust Law of Minnesota* (Laws 1899, p. 487, c. 359) making unlawful any contract or combination in restraint of trade or commerce within the State, is in substantially the same language as the Sherman Law, and must receive a similar construction. *Minnesota v. Northern Securities Co.*, 123 U. S., 692. 2—246
Decision reversed, 194 U. S., 38. Circuit court had no jurisdiction (2—533).

STATUTORY CONSTRUCTION.

1. When Congress adopts or creates a common-law offense, the courts may properly look to the common law for the true meaning and definition thereof, in the absence of a clear definition in the act creating it. *In re Greene*, 52 F., 104. 1—55
2. Where Congress adopts or creates a common-law offense, and in doing so uses terms which have acquired a well-understood

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meaning by judicial interpretation, the presumption is that the terms were used in that sense, and courts may properly look to prior decisions interpreting them for the meaning of the terms and the definition of the offense where there is no other definition in the act. *U. S. v. Trans-Mo. Ft. Assn.*, 58 F., 58. 1—186

3. Every statute must be read in the light of the general laws upon the same subject in force at the time of its enactment. *Ib.* 1—186
4. The Sherman Law should have a reasonable construction—one which tends to advance the remedy it provides, and to abate the mischief at which it was leveled. *Whitwell v. Continental Tobacco Co.*, 125 F., 454. 2—271
5. Debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. *U. S. v. Trans-Mo. Ft. Assn.*, 166 U. S., 290. 1—648
6. The debates in Congress on the Sherman Law show that one of the influences leading to the enactment of the statute was doubt as to whether there is a common law of the United States governing the making of contracts in restraint of trade, and the creation and maintenance of monopolies, in the absence of legislation. *Standard Oil Co. v. U. S.*, 221 U. S., 50. 4—121
- 7 Same.—While debates of the body enacting it may not be used as means for interpreting a statute, they may be resorted to as a means of ascertaining the condition under which it was enacted. *Ib.* 4—121
8. Same.—The Sherman Law was enacted in the light of the then existing practical conception of the law against restraint of trade, and the intent of Congress was not to restrain the right to make and enforce contracts, whether resulting from combinations or otherwise, which do not unduly restrain interstate or foreign commerce, but to protect that commerce from contracts or combinations by methods, whether old or new, which would constitute an interference with, or an undue restraint upon, it. *Ib.* 4—129
9. Same.—The Sherman Law should be construed in the light of reason; and, as so construed, it prohibits all contracts and combinations which amount to an unreasonable or undue restraint of trade in interstate commerce. *Ib.* 4—129
10. Same.—The Sherman Law contemplated and required a standard of interpretation, and it was intended that the standard of reason which had been applied at the common law should be applied in determining whether particular acts were within its prohibitions. *Ib.* 4—130
11. Same.—The Sherman Law generically enumerates the character of the acts prohibited and the wrongs which it intends to

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- prevent and is susceptible of being enforced without any judicial exertion of legislative power. *Ib.* 4—138
12. **Rule of Construction.**—In prior cases where general language has been used, to the effect that reason could not be resorted to in determining whether a particular case was within the prohibitions of the Sherman Law, the unreasonableness of the acts under consideration was pointed out and those cases are only authoritative by the certitude that the rule of reason was applied; *United States v. Trans-Missouri Freight Association*, 166 U. S., 290, and *United States v. Joint Traffic Association*, 171 U. S., 505, limited and qualified so far as they conflict with the construction now given to the Sherman Law. *Standard Oil Co. v. U. S.*, 221 U. S., 67. 4—136
13. **Same.**—In *Standard Oil Co. v. United States*, the words "restraint of trade," as used in section 1 of the Sherman Law, were properly construed by the resort to reason; the doctrine stated in that case was in accord with all previous decisions of this court, despite the contrary view at times erroneously attributed to the expressions in *United States v. Trans-Missouri Freight Association*, 166 U. S., 290, and *United States v. Joint Traffic Association*, 171 U. S., 505. *Ib.* 4—232
14. **Same.**—The Sherman Law must have a reasonable construction, as there can scarcely be any agreement or contract among business men that does not directly or indirectly affect and possibly restrain commerce. *United States v. Joint Traffic Association*, 171 U. S., 505, 568. *Ib.* 4—233
15. **Same.**—The public policy manifested by the Sherman Law is expressed in such general language that it embraces every conceivable act which can possibly come within the spirit of its prohibitions, and that policy can not be frustrated by resort to disguise or subterfuge of any kind. *Ib.* 4—234
16. **Same.**—In order to meet such a situation as is presented by the record in this case and to afford the relief for the evils to be overcome, the Sherman Law must be given a more comprehensive application than affixed to it in any previous decision. *Ib.* 4—230
17. **Extrinsic Aids to Construction.**—In construing statutes the courts should not close their eyes to what they know of the history of the country and of the law, of the condition of the law at a particular time, of the public necessities felt, and other kindred things for the reason that regard must be had to the words in which the statute is expressed as applied to the facts existing at the time of its enactment. *Mannington v. C. H. V. & T. Ry. Co.*, 183 F., 155. 3—858
18. **Same.**—**Legislative Intent.**—In the construction of statutes the intent of the lawmakers must be found in the statutes them-

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selves. The presumption is that language has been employed with sufficient precision to disclose the intent, and, unless an examination overthrows the presumption, nothing remains but to enforce the statute as written. *Ib.* 3—858

19. **Repeal of Special by General Law.**—Unless the repeal be express or the implication to that end be irresistible, a general law does not repeal a special statutory provision affording a remedy for specific cases. *Ex parte U. S., Petitioner*, 266 U. S., 424. 4—510

20. **Will Not Be Declared Void, Unless It So Appears Beyond a Reasonable Doubt.**—A Federal statute will not be declared void by the courts, unless it appears beyond a reasonable doubt that it is not within the constitutional powers of Congress. *U. S. v. United Shoe Mach. Co.*, 234 F., 143. 5—817

21. **Same—When Debates of Congress Will Be Resorted to in Aid of Construction.**—It is only when an act of Congress is ambiguous that the debates when it was under consideration may be resorted to in aid of its construction; where the language is clear, it is controlling and conclusive. *Ib.* 5—821

22. **When Executive Construction of, Entitled to Greater Weight Than That of Ordinary Public Officers.**—The settlement of the indebtedness of the Central Pacific Railroad Company to the United States, arranged by a commission consisting of the Secretary of the Treasury, the Secretary of the Interior, and the Attorney General, appointed by Congress to arrange such a settlement after Congress had knowledge that the lines of the Central Pacific Company had been leased to the Southern Pacific Company, in which settlement the interest of the lessee had been recognized by requiring it to guarantee the bonds given to secure the settlement notes, and which settlement had been approved by the President, is entitled to more weight than the administrative construction of a statute by ordinary public officers subject to legislative restraint, as a construction of the Sherman Law as not applying to the relation between the roads. *U. S. v. Southern Pacific Co.*, 239 F., 1004. 6—854

See also CONSTRUCTION OF STATUTES.

STATUTES OF LIMITATION.

1. The five-year limitation in section 1047, Rev. Stat., does not apply to suits brought under section 7 of the Sherman Law; but by the silence of that act the matter is left under section 721, Rev. Stat., to the local law. *Chattanooga Foundry & Pipe Co. v. Atlanta*, 203 U. S., 397. 3—120
2. **Same.**—The three-year limitation in section 2773, Tennessee Code, for actions for injuries to personal or real property, applies to injuries falling upon some object more definite than the plaintiff's total wealth and the general ten-year limitation in section 2776 for all actions not expressly pro-

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- vided for controls actions of this nature brought under section 7 of the Sherman Law. *Ib.* 3—121
3. **Limitation on Criminal Prosecution.**—A conspiracy in restraint of interstate commerce, or to monopolize the same, in violation of the Sherman Law, by causing a manufacturing corporation to suspend business in the interest of a competing concern, by obtaining control of its stock through a contract, was complete at latest when its object was fully accomplished by the making of the contract and the election of a board of directors, who voted to cease business; and a prosecution therefor is barred in three years from that time, under Rev. St. section 1044. *U. S. v. Kissel*, 173 F. 824. 3—746
4. **Same.**—If a conspiracy to commit a crime has been carried out, and the crime committed, those who committed it are subject to whatever penalties the law imposes and entitled to whatever protection the law affords; and if the statute of limitations is a bar to a prosecution for the crime, that bar can not be lifted by a prosecution for a conspiracy to commit that crime. *Ib.* 3—752
5. **Same—Special Plea of Limitation.**—The defense of the statute of limitations may be raised in a criminal case by a special plea before trial. *Ib.* 3—752
6. **When Special Plea Not Good.**—A special plea of the statute of limitations is not good as against an indictment charging a conspiracy to restrain or monopolize trade, in violation of the Sherman Law, by improperly excluding a competitor from business, although the conspiracy is alleged to have been formed on a specified date, which was more than three years before the finding of the indictment, where such indictment, consistently with the other facts, alleges that the conspiracy continued to the date of its presentment. *U. S. v. Kissel*, 54 L. ed., 1168. 3—825
7. **Continuance of Conspiracy.**—A conspiracy to restrain or monopolize trade, in violation of the Sherman Law, by obtaining control of a competitor through a pledge of a majority of its stock to secure a loan to a stockholder, and then voting to suspend business until further order of the board of directors, continues, so far as the statute of limitations is concerned, so long as any further action is taken in furtherance of the conspiracy. *Ib.* 3—823
8. **Does Not Begin to Run Until Discovery of Conspiracy and of Cause of Action.**—Where plaintiff sued defendants for conspiracy, consisting of an alleged unlawful agreement to injure plaintiff in its business, in violation of the Sherman Law, the period of limitation did not begin to run until plaintiff discovered the existence of the conspiracy and its

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cause of action. *American Tobacco Co. v. Peoples' Tobacco Co.*, 204 F., 60. 4—140

STOCKHOLDER.

1. **Minority, of a Corporation, Can Not Maintain a Suit for Damages Under the Sherman Law.**—Minority stockholders can not maintain a suit in equity under the Sherman Law to recover threefold damages in the right of the corporation for a violation of the act. *Corey v. Independent Ice Co.*, 207 F., 460. 5—333
2. **Minority, of a Corporation, Can Not Maintain Suit in Equity on Behalf of, Under the Sherman Law.**—Under section 7 of the Sherman Law, providing that any person injured by any violation of that act may sue therefor and recover threefold the damages by him sustained, the action to recover treble damages must be an action at law in which defendants have the constitutional right to a jury trial, and hence a minority stockholder in a corporation can not maintain a suit in equity on behalf of the corporation for such relief upon the corporation's refusal to sue. *Fleitmann v. United Gas Imp. Co.*, 211 F., 103. 5—428
3. **Minority, of a Corporation, Can Not Maintain Suit in Equity on Behalf of, for Damages Under the Sherman Law; Nor Have a Decree Requiring Corporation to Sue, etc.**—A suit in equity by a single stockholder of a corporation against that and other corporations to require the latter to pay to the former threefold damages under section 7 of the Sherman Law, can not be maintained, nor, in such case, can there be a decree requiring the corporation of which plaintiff is a stockholder to sue the other corporations or permitting him to sue in its name and on its behalf. *Fleitmann v. Welsbach Street Lighting Co.*, 240 U. S., 28. 5—431
4. **Right of, to Sue for Corporation, Under Sherman Law, Limited by General Principles.**—The established principles limiting the right of a stockholder to sue on behalf of the corporation when it refuses to do so, restated and held applicable to an action for damages based on alleged injury to the corporation through violations of the Sherman Law. *United Copper Sec. Co., v. Amalgamated Copper Co.*, 244 U. S., 263. 6—950
5. **Same—Right of, to Sue for Corporation, Under Sherman Law, Limited to Equitable Forum.**—The rule which confines the individual stockholder to the equitable forum when seeking to enforce a right of the corporation applies when the cause of action arises under the Sherman Law, as in other cases. *Fleitmann v. Welsbach Co.*, 240 U. S., 27, distinguished. *Ib.* 6—951

See also CORPORATIONS, 2-11; COMBINATIONS, 332-337.

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STOCK QUOTATIONS. See COMBINATIONS, 332-336.

STRIKE.

1. **Workingmen Have Right to Strike Peaceably, but Not to Threaten Owners, etc.**—Workingmen have the right to unite to protect themselves, and to strike peaceably for grievances, but not to threaten owners, builders, and architects that their contracts will be held up if they, or any of their sub-contractors, use another employer's products. *Irving v. Joint Council of Carpenters, etc.*, 180 F., 900. 5—383
2. **A strike is merely an agreement by all the members of a union not to do business with an employer, in order to obtain shorter hours, higher wages, or some other legitimate end.** *U. S. v. King*, 229 F., 279. 6—419
3. **Interference by Violence, by Members of Labor Union on a Strike, With Business of Their Employer, Held Unlawful and Enjoined.**—Section 20 of the Clayton Law declares that no restraining order or injunction shall be granted in any case between an employer and employees, or between persons employed and persons seeking employment, involving or growing out of a dispute concerning the terms or conditions of employment, unless necessary to prevent irreparable injury to property or property rights, and that no such restraining order shall prohibit any person or persons, whether singly or in concert, from terminating any employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceable means to do so. Employees of complainant, a ship company, engaged as a common carrier, which also carried the mails, struck, and defendants, composing the union of which they were members, picketed the wharves of complainant and intimidated other laborers from accepting complainant's offers of employment. Defendants threw rocks on the wharves, and in other ways interfered by violence with complainant's business and access to its ships. Interstate Commerce Act of Feb. 4, 1887, section 3, (24 Stat., 380), and section 10, as amended by the Act of March 2, 1889, section 2 (25 Stat., 857), respectively declare that every common carrier subject to the provisions of the act shall afford reasonable facilities for the exchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines, and that any common carrier which shall willfully omit to do any act or thing required to be done shall be guilty of a misdemeanor. *Held* that, though defendants were authorized under the statute to persuade third persons to decline complainant's offers of employment, and to refuse to deliver goods to complainant, or to patronize it, their interference with complainant's transportation business by violence was unlawful and

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- will be enjoined, as it would not only expose complainant to loss, but to prosecution for violations of law. *Alaska S. S. Co. v. Inter. Longshoremen's Ass'n*, 236 F., 970. 6—682
4. **Same—Labor Union, Conducting Strike, Liable for Unlawful Acts of Members and Others Associating With Strikers.**—A trade union, conducting a strike, is liable for the unlawful acts of members and others associating themselves with the strikers, unless such acts be disavowed, and, in the case of members, the offenders be disciplined or expelled. *Ib.* 6—684
5. **Strikers Have a Right to Picket and to Persuade, but Not Coerce, Others Seeking Employment Not to Do So.**—Striking employees have a lawful right to place pickets in the streets leading to their employer's plant, to ascertain who are continuing or seeking employment there, and to persuade, but not to coerce, them not to do so, and the maintenance of such pickets, and attempts to persuade employees to cease working, can not be enjoined. *Tri-City Trades Council v. American Steel Foundries*, 238 F., 730. 6—916
6. **Same—Exercise of Right to Strike, by Employees, Not an Unlawful Conspiracy.**—The exercise by employees of their right to combine and strike to obtain better wages, though it interferes with the employer's business, is not an unlawful conspiracy, which entitles the employer to an injunction restraining acts in furtherance thereof which are in themselves lawful. *Ib.* 6—918
7. **Same—Commission of Unlawful Acts Does Not Taint Purpose With Unlawfulness.**—The commission of unlawful acts to effectuate that purpose does not taint the purpose itself with unlawfulness, so as to justify an injunction against lawful as well as unlawful acts in furtherance thereof. *Ib.* 6—918
8. **Same—Does Not Fully Terminate Relationship Between Strikers and Their Employer.**—A labor union, of which former employees engaged in a strike were members, is not a mere intermeddler, whose interference with other employees may be restrained, when only lawful means are used, since a strike does not fully terminate the relationship between the parties, but creates a relationship, neither that of general employer and employee, nor that the employers and employees seeking work from them as strangers. *Ib.* 6—919
9. **In Case of, Test of Lawfulness of Acts of Strikers.**—Under the Clayton Law, the test whether an act is lawful is the question whether it would be lawful if no strike existed; and no action having in it the element of intimidation, coercion, or abuse, physical or verbal, or of invasion of rights of privacy, nor any act or speech which a fair-minded man may reasonably judge to be intended to convey insult, threat, or annoyance to another, or to work abuse upon him, is lawful. *Stephens v. Ohio State Tel. Co.*, 240 Fed., 776. 6—937

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10. **Same—Striking Employees Can Not Lawfully Interfere With Business of Employer.**—Striking employees of a telephone company, which is a public utility whose first duty is to serve the public, can not lawfully interfere, under the Clayton Law, with the business of the company, if it can find people willing to work for it, since, if it can find laborers, it must employ them and fulfill its public duties. *Ib.* 8—942

See also COMBINATIONS, ETC., 234, 235, 240-246, 251, 252, 376.

SUBPENA DUCES TECUM. *See* CORPORATIONS, 12-15; COURTS, 37.

SUGAR. *See* *H. C. Knight Co. case*, Vol. I, pages 250, 258, 379.

SUIT. *See* ACTIONS AND DEFENSES.

TAXATION.

That a State May Tax, Does Not Determine That a Business Is Outside the Sherman Law.—That a State has power to tax a business is not determinative that a combination monopolizing such business is outside the Sherman Law; nor does it follow, because a combination is within the act, that the business may not be subject to a State tax. *Marienelli, Lim., v. United Booking Offices*, 227 F., 169. 5—950

TELEGRAMS AND TELEPHONE MESSAGES. *See* INTERSTATE COMMERCE, 24.

TELEPHONE AND TELEGRAPH COMPANIES.

1. **Long-Distance Service, When Not Reasonably Adequate.**—Long-distance telephone service is not necessarily reasonably adequate because it reaches the city or district of residence of the person with whom communication is desired. *U. S. Tel. Co. v. Cent. Union Tel. Co.*, 202 F., 71. 4—887
2. **Same—Power of, to Consolidate, Will Not Justify Contracting With Great Number of Other Companies for Exclusive Mutual Relation.**—Statutory power to consolidate with or purchase another company will not justify a general system of contracting with a great number of other companies for exclusive mutual relation. *Ib.* 4—888
3. **Same—General System of Exclusive Contracts Might Be Justified for Term Not Beyond Necessity.**—A general system of exclusive contracts prima facie restraining competition, might be justified if they are for a term not beyond any such necessity, as a 99-year contract for exclusive interchange of telephone business. *Ib.* 4—889

TESTIMONY. *See* WITNESSES.

THROUGH TRANSPORTATION. *See* CARRIERS.

TICKET BROKERS. *See* COMBINATIONS, ETC., 199.

TILES. *See* COMBINATIONS, 91-94.

TOBACCO TRUST CASES.

Whitwell v. Continental Tobacco Co., 125 F., 454 (2—271).

In re Hale, 139 F., 496 (2—804).

Hale v. Henkel, 201 U. S., 43 (2—874).

McAlister v. Henkel, 201 U. S., 61 (2—918).

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People's Tob. Co. v. American Tob. Co., 170 F., 408 (3—878).

Ware-Kramer Tob. Co. v. American Tob. Co., 178 F., 117 (3—766); 180 F., 160 (3—780).

United States v. American Tob. Co., 164 F., 700 (3—427); 164 F., 1024 (3—468); 221 U. S., 106 (4—168); (final decree) (4—246).

TRADE AGREEMENTS.

1. **Limiting Output, Sales, and Price.**—A trade agreement under which manufacturers who, prior thereto were independent and competitive, combined and subjected themselves to certain rules and regulations, among others limiting output and sales of their product and quantity, vendee and price; *Held* in this case to be illegal under the Sherman Law. *Standard Sanitary Mfg. Co., v. U. S.*, 226 U. S., 48. 4—648
2. **Same—Conferring Right on All Parties to Agreement to Use a Patent.**—A trade agreement involving the right of all parties thereto to use a certain patent, which transcends what is necessary to protect the use of the patent or the monopoly thereof as conferred by law and controls the output and price of goods manufactured by all those using the patent, is illegal under the Sherman Law. *Ib.* 4—648
3. **Same—When Against Policy of Law, Good Intentions of Parties Immaterial.**—The Sherman Law is its own measure of right and wrong; courts can not declare an agreement which is against its policy legal because of the good intentions of the parties making it. *Ib.* 4—649
4. **Same—Limiting Output, Sales, Prices, and Use of Patents.**—Agreements embracing 85 per cent of the manufacturers of, and 90 per cent of the jobbers in, enameled ironware, which, in addition to a provision against the marketing of "seconds," intended to carry out the ostensible object of the agreements, also provide for regulating prices through the instrumentality of a price schedule committee, fix preferential discounts, confining them to sales to jobbers only, authorize rebates if the agreements shall be faithfully observed, and forbid all sales to jobbers not in the combination, making a condition of their entry a promise not to resell to plumbers except at the prices determined by the manufacturers and not to deal in the products of manufacturers not in the combination, can not escape condemnation under the Sherman Law, because the agreements take the form of licenses from the owner of a patent for a device used in the enameling process. 57 L. Ed., 107. 4—648

TRADE AND COMMERCE.

The words "Trade" and "Commerce" as used in the Sherman and the Clayton Laws do not apply to the business of fire insurance in the District of Columbia. *Lown v. Underwriters' Assn., D. C.* (Not reported.) 6—1048

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TRADE-MARKS.

1. **Purpose of, Is to Protect Owner in His Property, and the Public from Deception.**—The protection given by law to trade-marks has for its object the protection of the owner in his property, and the protection of the public from deception, by reason of a misleading claim that the article bearing the trade-mark is the article manufactured by the owner of the trade-mark, when in fact it is but a substitute. *Coca-Cola Co. v. Butler & Sons*, 229 F., 229. 6—109
2. **Same—The Use of Any Simulation of, Likely to Deceive the Public, Will Be Enjoined.**—The use of any simulation of a trade-mark which is likely to induce common purchasers, exercising ordinary care, to buy the article to which the trade-mark is affixed, thereby indicating that it is the product of the owner of the trade-mark, is unlawful, and will be enjoined. *Ib.* 6—400

TRADING STAMPS.

1. **Restricting to Subscribers, of Redemption Privileges of Trading Stamps, Not a Violation of the Clayton Act.**—The Clayton Law, prohibiting the making of a contract fixing the price for merchandise on condition that the lessee or purchaser shall not use or deal in the merchandise of a competitor, if the effect of the contract is to substantially lessen competition or tend to create a monopoly, does not prohibit a trading-stamp concern from restricting redemption privileges to subscribers under contract with it binding such customers to distribute stamps only to customers. *Sperry & Hutchinson Co. v. Fenster*, 219 F., 756. 5—508
2. **Same—Right to Redeem Stamps a Property Right, the Wrongful Use of Which May Be Enjoined by Concern Issuing Them.**—Where complainant, a trading-stamp concern issued redeemable stamps only to subscribers under a contract by which the latter agreed to distribute the stamps only to customers, the right to redeem the stamps was a property right transferable by possession, while the license to use them for advertising purposes was not transferable without compensation to complainant, and hence complainant was entitled to enjoin the use of its stamps for advertising purposes by persons who had obtained them from subscribers in violation of the restriction. *Ib.* 5—509

TRANSPORTATION. See CARRIERS; AND STATUTES, 130.

TREBLE DAMAGES. See ACTIONS AND DEFENSES, 58-84; STATUTES, 132-141.

TRIAL.

1. **Evidence—Court to Instruct Jury as to Effect of, When Against One Conspirator Only.**—In a trial of a number of defendants for conspiracy, where items of evidence are necessarily admitted which at the time are competent against one defendant

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only, it is proper for the court to caution the jury as the trial proceeds as to the effect of such evidence, but its failure to do so, when not requested, is not reversible error. *Steers v. U. S.*, 192 F., 7. 4—436

2. **Instructions to Jury Not Erroneous, in Absence of Requests to Charge.**—Instructions in a prosecution for conspiracy, taken together, *held* not erroneous, in the absence of requests for more specific instructions on certain points. *Ib.* 4—437

3. **Where the Defenses of Persons Jointly Indicted Are Different, They Are Entitled to Separate Trial.**—In a prosecution of the directors of a railroad company for the violation of the Sherman Law, where it appeared that a suit had been several years before instituted against the corporation, charging it with violating that act in making certain combinations, which suit had later been dismissed by the Attorney General for the stated reason that the legislature of the State which was most affected by the principal combination had enacted a law permitting such combination under certain conditions and restrictions, intended to safeguard the rights of the people, and that the other combinations had been declared *ultra vires* and were being discontinued, the directors, who had been elected to the board after the discontinuance of the former suit, are entitled to a separate trial, since the evidence as to them would be different, and their defenses different, and might be antagonistic to the defense of the other directors. *U. S. v. Rockefeller*, 222 F., 534. 5—844

TRINIDAD ASPHALT. See COMBINATIONS, ETC., 377-379.

TRUSTS. See WORDS AND PHRASES.

TRUSTEES.

1. **Power to Sue in Foreign Jurisdiction, on Dissolution of Corporation.**—A trustee of a Maine corporation, appointed in proceedings for the dissolution of the corporation under Revised Statutes of Maine, providing for the dissolution of corporations and the appointment of trustees, is vested by operation of law with the title of the dissolved corporation, and he has capacity to sue in a foreign jurisdiction. *Strout v. United Shoe Mach. Co.*, 195 F., 319. 4—538

2. **Same—May Prosecute Suits After Three Years.**—The power of a trustee of a Maine corporation, appointed under Revised Statutes of Maine, §§ 77-81, 89, in proceedings for the dissolution of the corporation, is not affected by the provision giving dissolved corporations existence for three years to prosecute and defend suits, and he may prosecute suits after the expiration of the three years. *Ib.* 4—539

UNFAIR COMPETITION.

1. **The Fact That a Competitor May Infringe Its Patents, Does Not Give Owner of a Patent Right to Resort to Unfair Methods of Competition.**—Both the patent laws and the Sherman Law

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were enacted under constitutional authority, and they must be construed together, giving full force and effect to each so far as that may be done. That a patentee, putting his invention to use, has become entitled to a monopoly of its manufacture and sale, and that his competitors in interstate commerce therein are infringers of his patent, does not give him a right to resort to methods of unfair competition to force the competitors out of business; and such action, pursuant to a conspiracy or combination, is in restraint of interstate commerce, and in violation of the Sherman Law. *U. S. v. Patterson et al.*, 205 F., 297. 5—53

2. **Fraud Being the Basis, in Actions for, Must Be Alleged and Proved.**—Fraud is the basis of all actions of unfair competition, and, as that is never presumed, the facts relied on to show fraud must be pleaded and proved. *Motion Picture Patents Co. v. Eclair Film Co.*, 208 F., 417. 5—345

3. **Selling of a Beverage Under the Name of a Preparation Bearing a Trade-Mark, Unfair, and Will Be Enjoined.**—Plaintiff, a manufacturer of a sirup constituting the principal ingredient of a beverage sold at soda fountains and in bottles, made up the sirup in two forms—one for sale through jobbers for soda fountains, and one intended for use in bottling and sold by it only to bottlers selected, designated, and licensed by it, and authorized to use thereon its distinctive tops and labels bearing its trade-mark—there being some differences in the two sirups, on account of the different purposes to which they were to be put. It guaranteed its product to be wholesome and uniform, as well as its cleanliness and excellence of manufacture, and maintained an elaborate system for the inspection of the plants of its licensed bottlers. Defendant purchased from jobbers the sirup intended for soda-fountain use, and used it in manufacturing a bottled preparation which it was selling under the name of plaintiff's product, using the tops and labels prepared by plaintiff for its product. *Held*, that this constituted unfair competition, and would be enjoined. *Coca-Cola Co. v. Butler & Sons*, 229 F., 232. 6—412

4. **Unfair Practices as Part of Scheme in Attempting to Monopolize, Are a Subject for Damages.**—Where a company attempted to monopolize the manufacture and sale of coated wire nails, and as part of its plan engaged in various illegal and unfair practices, such as hindering its competitors from obtaining raw materials and the necessary machines, bribing their factory employees to disclose factory conditions and to send out defective goods, and bribing office employees to disclose the names of their customers and their contracts, and then selling to such customers below cost, a competitor attacked in these ways had a right of action for damages, under the

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Sherman Law, since while no action lies under that act for unfair practices, damages are recoverable thereunder for monopolizing, or attempting to monopolize, and acts which are a part of the monopolizing, or attempting to monopolize, are a subject for damages. *American Steel Co. v. American Steel & Wire Co.*, 244 F., 302. 6—1021

5. For Persons, Buying Ford Cars from Agent, to Advertise That They Are "Ford Agents."—Even admitting the so-called agency contracts of plaintiff manufacturer of the Ford car, whereby the so-called agent is required to sell at a fixed uniform list price, and only to persons buying for immediate use, and not for resale, to be invalid, it is unfair competition for defendants, buying them from such an agent and reselling at less than list price, for the purpose of deceiving, to use plaintiff's trade-mark after the manner of a regular Ford agency, and to advertise that they are "Ford agents" and a "Ford auto agency." *Ford Motor Co. v. Boone et al.*, 244 F., 338. 6—1027

See also INJUNCTION, 13.

UNITED STATES.

The Government of the United States has jurisdiction over every foot of soil within its territory, and acts directly upon each citizen. *In re Debs*, 158 U. S., 564. 1—565

See also ACTIONS AND DEFENSES, 52—55.

UNLAWFUL ACTS.

1. Commission of, in Strike, Does Not Taint Purpose Itself With Unlawfulness.—The commission of unlawful acts to effectuate a lawful purpose does not taint the purpose itself with unlawfulness, so as to justify an injunction against lawful as well as unlawful acts in furtherance thereof. *Tri-City Council v. American Steel Foundries*, 238 F., 732. 6—918
2. Test of Lawfulness, in Case of a Strike.—Under the Clayton Law, the test whether an act is lawful is the question whether it would be lawful if no strike existed; and no action having in it the element of intimidation, coercion, or abuse, physical or verbal, or of invasion of rights of privacy, nor any act or speech which a fair-minded man may reasonably judge to be intended to convey insult, threat, or annoyance to another, or to work abuse upon him, is lawful. *Stephens v. Ohio State Tel. Co.*, 240 Fed., 771. 6—937

See also ACTS.

UNREASONABLE SEARCHES. See SEARCH AND SEIZURE.

VENUE.

1. Suit by Chancery Receiver—Where to Be Brought.—A mere chancery receiver, having no title to the assets or to the claim sued on, can not maintain an action in the Federal courts in a jurisdiction other than that in which he was appointed. *Strout v. United Shoe Mach. Co.*, 195 F., 319. 4—535
2. When Receiver of Corporation May Bring Suit in Foreign Jurisdiction.—A receiver of a corporation who is a successor

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- in title of the corporation may sue in a foreign jurisdiction.
Ib. 4—535
3. **Trustee on Dissolution of Maine Corporation, May Bring Suit in Foreign Jurisdiction.**—A trustee of a Maine corporation, appointed in proceedings for the dissolution of the corporation under Revised Statutes of Maine, providing for the dissolution of corporations and the appointment of trustees, is vested by operation of law with the title of the dissolved corporation, and he has capacity to sue in a foreign jurisdiction.
Ib. 4—538
4. **Same—May Bring Suit After Expiration of Three Years.**—The power of a trustee of a Maine corporation, appointed under Revised Statutes of Maine, sections 77–81, 89, in proceedings for the dissolution of the corporation, is not affected by the provision giving dissolved corporations existence for three years to prosecute and defend suits, and he may prosecute suits after the expiration of the three years. *Ib.* 4—538
5. **Section 100, Judicial Code, Does Not Require Trial at Dayton, of Persons Living and Doing Business There.**—Section 100, Judicial Code, dividing the Southern district of Ohio into two divisions and providing that certain terms of the district court for the Western division shall be held at Cincinnati and certain terms for the Eastern division at Columbus, and that terms for the Southern district shall be held at Dayton on dates specified, that prosecutions for crimes and offenses committed in any part of the district shall be cognizable at the terms held at Dayton, and that all suits within either division may be instituted, tried, and determined at such terms, does not require that prosecutions shall be instituted at Dayton, nor that prosecutions instituted at Cincinnati or Columbus shall be transferred to Dayton for trial, and on a trial of the officers and agents of the N. Company, having its plant and principal office at Dayton, where a number of the defendants resided, it was not error to refuse to transfer the case from Cincinnati to Dayton for trial. *Patterson v. U. S.*, 222 F., 626. 5—102
6. **The Sherman Law Removes the Limitations on, Between Diverse Citizens, and Permits Suit Where Service Can Be Made.**—The provision in the Sherman Law, that any person injured in his business or property by any other person or corporation, by reason of anything forbidden or declared unlawful by the act, may sue therefor in any circuit court in the district in which defendant resides or is found, merely removes the existing limitations on the venue of actions between diverse citizens, and permits plaintiff to sue defendant wherever he can serve defendant with process good where executed. *Thorburn v. Gates*, 225 F., 615. 6—200

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7. Allegation as to, in the indictment in the Cement Trust case, held sufficient. *U. S. v. Cowell*, 243 F., 733. 6—1007

VERDICT.

1. May Include Damages Accruing After Suit Brought, as a Consequence of Acts Done Before Suit.—A verdict for damages resulting from an illegal combination in restraint of interstate trade under the Sherman Law, may include those accruing after commencement of the suit but as the consequence of acts done before and constituting part of the cause of action declared on. *Lawlor v. Loewe*, 235 U. S., 536. 5—424
2. When May Be Assumed Responsive to Particular Claim for Damages.—*Semble*, that a general verdict for an amount which equals a particular claim of damages and interest may be assumed to have been responsive to that claim alone, although there were others which were submitted to the jury. *Thomsen v. Cayser*, 243 U. S., 89. 6—730

WAGES, ETC., OF EMPLOYEES. See COURTS, 8.

WALL PAPER TRUST. See CONTINENTAL WALL PAPER CO. v. LEWIS VOIGHT & SONS CO., 148 F., 939 (3—44); 212 U. S., 227 (3—480).

WITNESSES.

1. Incriminating Evidence—Protection—Constitution—Statute.—A witness before the grand jury can not be required, under the Fifth Amendment to the Constitution, to answer as to his participation in and knowledge of a combination to regulate and control the price of cotton seed and the product and price of oil throughout certain States, in violation of the act to protect trade and commerce against unlawful restraints and monopolies, notwithstanding section 860, Revised Statutes, providing that no evidence obtained from a witness by means of a judicial proceeding shall be given in evidence or in any manner used against him in any court in any criminal proceeding, since such section does not exempt the witness from prosecution for the offense which may be disclosed by his testimony. *Foot v. Buchanan*, 113 F., 158. 2—106
2. Same—Immunity of Witnesses.—Act of February 11, 1893 (27 Stat., 443), providing that no person shall be excused from testifying in a proceeding growing out of an alleged violation of an act to regulate interstate commerce, approved February 4, 1887, on the ground that his testimony will tend to incriminate him, and that no person shall be prosecuted, etc., on account of anything concerning which he may testify in such proceeding, applies only to proceedings connected with the act of February 4, 1887, and does not apply to a prosecution for violation of the Sherman Law, so as to abrogate in relation thereto the Fifth Amendment to the Constitution,

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- providing that no person shall be compelled in a criminal case to be a witness against himself. *Ib.* 2—109
3. **Same—Question of Incrimination for Judge to Decide.**—Where a witness claims that the answer to a question will tend to incriminate him, it is not for the witness, but for the judge, to decide whether, under all the circumstances, such might be the effect, and the witness entitled to the privilege of silence. *Ib.* 2—109
4. **Same.**—Where a person has already been indicted for an offense about which he is to be examined as a witness, and the questions asked him tend to connect him with such offense, the testimony sought is within the inhibition of the Fifth Amendment to the Constitution, providing that no person shall be compelled in any criminal case to be a witness against himself. *Ib.* 2—110
5. **Same—Assurance of Safety—Relinquishment of Privilege—Can Not Be Compelled.**—Where a witness before a grand jury declines to answer certain questions, and is taken before the judge, who assures him that he can safely answer, as his testimony can not be used against him, he is not compelled by such assurance to relinquish his constitutional privilege where the answer may tend to criminate him. *Ib.* 2—110
6. **Same—Contempt—Commitment—Habeas Corpus—Relief.**—Where a witness is committed for contempt in refusing to answer all of a series of questions, for the reason that the answers would tend to criminate him, and some of the answers would have that tendency, he should not be denied relief on habeas corpus because some of the questions might be safely answered. *Ib.* 2—110
7. **Immunity of Witnesses—Sherman Law—Inquisitions.**—An inquisition before a grand jury to determine the existence of supposed violations of the Sherman Law was a "proceeding" within act of Congress of February 19, 1903 (32 Stat., 848), providing that no person shall be prosecuted or subjected to any penalty for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence in any "proceeding" under several statutes mentioned, including such Sherman Law. *In re Hale*, 139 F., 496. 2—804
8. **Same—Unreasonable Searches—Rights of an Agent—Subpoena Duces Tecum.**—A subpoena duces tecum commanding the secretary and treasurer of a corporation supposed to have violated the Sherman Law to testify and give evidence before the grand jury, and to bring with him and produce numerous agreements, letters, telegrams, reports, and other writings, described generically, in effect including all the correspondence and documents of his corporation originating since the

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date of its organization, to which nineteen other named corporations or persons were parties, for the purpose of enabling the district attorney to establish a violation of such act on the part of the witness' principal, constituted an unreasonable search and seizure of papers, prohibited by the Fourth Amendment to the Constitution. *Ib.* 2—816

9. **Same—Habeas Corpus.**—Where a subpoena duces tecum was directed to be issued by a circuit judge, and the witness was committed for contempt for failure to obey the same, he would not be discharged on habeas corpus by another judge of the same court, though the latter was of the opinion that the subpoena authorized an unconstitutional search and seizure of private papers. *Ib.* 2—816
10. **Protection of Witness—Act of February 25, 1903 (32 Stat., 905).**—The examination of witnesses before a grand jury concerning an alleged violation of the Sherman Law is a "proceeding" within the meaning of the proviso to the act of February 25, 1903 (32 Stat., 903), that no person shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning which he may testify or produce evidence in any proceeding, suit, or prosecution under certain named statutes, of which the Sherman Law is one. The word "proceeding" should receive as wide a construction as is necessary to protect the witness in his disclosures. *Hale v. Henkel*, 201 U. S., 43. 2—874
11. **The constitutional right of a witness to claim his privilege against self-incrimination, afforded by the Fifth Amendment, when examined concerning an alleged violation of the Sherman Law, is taken away by the proviso to the act of February 25, 1903 (32 Stat., 904), that no person shall be prosecuted or be subjected to any penalty or forfeiture for, or on account of, any transaction, matter, or thing concerning which he may testify or produce evidence in any proceeding, suit, or prosecution under certain named statutes, of which the Sherman Law is one, which furnishes a sufficient immunity from prosecution to satisfy the constitutional guaranty, although it may not afford immunity from prosecution in the State courts for the offense disclosed. [See also *Nelson v. United States*, 201 U. S., 92 (2—920).]** *Ib.* 2—897
12. **The interdiction of the Fifth Amendment operates only where a witness is asked to incriminate himself, and does not apply if the criminality is taken away. A witness is not excused from testifying before a grand jury under a statute which provides for immunity, because he may not be able, if subsequently indicted, to procure the evidence necessary to maintain his plea. The law takes no account of the practical**

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- difficulty which a party may have in procuring his testimony.
Ib. 2—898
13. The difficulty, if any, of procuring the testimony which a person has given on his examination before a grand jury concerning an alleged violation of the Sherman Law does not render the immunity from prosecution or forfeiture given by the proviso to the act of February 25, 1903, insufficient to satisfy the guaranty of the Fifth Amendment against self-incrimination.
Ib. 2—899
14. A witness can not refuse to testify before a Federal grand jury in face of a Federal statute granting immunity from prosecution as to matters sworn to, because the immunity does not extend to prosecutions in a State court. In granting immunity, the only danger to be guarded against is one within the same jurisdiction and under the same sovereignty. *Ib.* 2—899
15. The privilege against self-incrimination afforded by the Fifth Amendment is purely personal to the witness, and he can not claim the privilege of another person, or of the corporation of which he is an officer or employee. [To same effect *McAlister v. Henkel*, 201 U. S., 90 (2—919).] *Ib.* 2—900
16. A witness who can not avail himself of the Fifth Amendment as to oral testimony because of a statute granting him immunity from prosecution can not set it up as against the production of books and papers, as the same statute would equally grant him immunity in respect to matters proved thereby. *Ib.* 2—901
17. Corporations Can Not Refuse to Answer Unless Protected by Immunity Statute.—While an individual may lawfully refuse to answer incriminating questions unless protected by an immunity statute, a corporation is a creature of the State, and there is a reserved right in the legislature to investigate its contracts and find out whether it has exceeded its powers. *Ib.* 2—905
18. Under the practice in this country the examination of witnesses by a Federal grand jury need not be preceded by a presentment or formal indictment, but the grand jury may proceed, either upon their own knowledge or upon examination of witnesses, to inquire whether a crime cognizable by the court has been committed, and, if so, they may indict upon such evidence. *Ib.* 2—896
19. Summoning witnesses before a grand jury it is sufficient to apprise them of the names of the parties with respect to whom they will be called to testify without indicating the nature of the charge against them, or laying a basis by a formal indictment. *Ib.* 2—891
20. *Hale v. Henkel* (vol. 2, p. 874) followed to the effect that officers and employees of corporations can not, under the Fourth and

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Fifth Amendments, refuse to testify or produce books of corporations in suits against the corporations for violations of the Sherman Law, in view of the immunity given by the act of February 25, 1903. *Nelson v. United States*, 201 U. S., 92. 2—920

21. Witnesses can not by objections to materiality of evidence be relieved from testifying. The tendency or effect of the testimony on the issues between the parties is no concern of theirs. *Ib.* 2—942
22. Objections to the materiality of the testimony are not open to consideration on a writ of error sued out by witnesses to review a judgment for contempt entered against them for disobeying an order to testify. *Ib.* 2—943
23. Immunity of Witness.—That a witness called to testify before a grand jury is interrogated with reference to an offense against the Sherman Law, which is the subject of a crime and of an offense laid in an existing indictment, does not confer on the witness a privilege to refuse to testify, as an answer when given is a complete bar to the pending prosecution, or any further prosecution for the offense, if it be pertinent to the subject matter. *In re Kittle*, 180 F., 948. 3—805
24. Self-Incriminating Testimony—Privilege of Witness.—The constitutional privilege of a witness against incrimination can not be claimed, if all prosecution is barred from the date of the testimony, regardless of whether he has been indicted or not. *Ib.* 3—805
25. Witnesses—Persons Not Parties May Be Compelled to Produce Books and Papers.—A court of equity has power to compel the production of books and papers by virtue of its inherent and general jurisdiction, and this power is not confined to the parties to the suit, but extends to third persons. *U. S. v. Terminal Ry. Assn., etc.*, 148 F., 488. 3—38
26. Same—Subpœna Duces Tecum—Refusal to Obey.—A witness can not excuse his failure to produce books and papers in obedience to a subpœna duces tecum on the ground that the evidence called for is immaterial, irrelevant, or incompetent under the issues in the case, that question being one for the court to determine when the evidence is offered. *Ib.* 3—38
27. Non-Resident Found in District May Be Compelled to Appear Before Master and Testify.—Where a master is appointed to take testimony in the district in which a suit is pending and proceeds to take testimony in another district, persons living in the latter district whose legal domicile is elsewhere may be compelled to appear, and any person found in such district who answers a subpœna and appears before the examiner may be lawfully examined. *U. S. v. Standard Sanitary Mfg. Co.*, 187 F., 234. 4—259

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- 28. Same—Court May Compel Witness to Testify Before Master, Although Evidence May Be Incompetent.**—Where witnesses appear before a master taking testimony in a district other than that in which he was appointed, and on his refusing to answer questions, an application is made to the court of such district to coerce the witness, it is the duty of such judge to compel the production of the evidence, although the judge deems it incompetent, irrelevant, or immaterial, unless the witness or the evidence is privileged, or it clearly and affirmatively appears that it can not be competent, material, or relevant, and that it would be an abuse of process to compel its production. *Ib.* 4—259
- 29. Refusal to Answer or Produce Books—Order of Circuit Court to Answer or Be Held in Contempt Not Reviewable by Supreme Court.**—In a suit in a circuit court of the United States brought by the United States against corporations for violations of the Sherman Law, a witness refused to answer questions or produce books before the examiner on the ground of immateriality, also pleading the privileges of the Fifth Amendment; the court overruled the objections and ordered the witness to answer the questions and produce the books; an appeal was taken to this court. *Held*, that, while such an order might leave the witness no alternative except to obey or be punished for contempt, it is interlocutory in the principal suit and not a final order, nor does it constitute a practically independent proceeding amounting to a final judgment, and an appeal will not lie therefrom to this court. *Alexander v. United States*, 201 U. S., 117. 2—945
- 30. Same—But an Appeal from a Judgment of Contempt is Reviewable.**—If the witness refuses to obey and the court goes further and punishes him for contempt there is a right of review, and this is adequate for his protection without unduly impeding the process of the case. [*See also Nelson v. United States*, 201 U. S., 121 (2—920).] *Ib.* 2—950
- 31. Can Not Be Given Immunity, in Private Suit, So As to Bind Department of Justice.**—A witness, in a suit between private parties can not be given immunity under the Federal statutes so as to bind the Department of Justice. *Great Eastern Clay Products Co.* (Not reported.) 6—1039

CREDIBILITY. See JURY, 2.

IMMUNITY. See IMMUNITY.

WOODEN-WARE. See COMBINATIONS, ETC., 96, 285.

WORDS AND PHRASES.

- 1. The term "alternative,"** as used in Equity Rule 25, allowing relief to be stated and sought in alternative forms, means mutually exclusive. *Boyd v. N. Y. & H. R. R. Co.*, 220 F., 179. 5—518

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2. An "attempt to monopolize" is an attempt to obtain control of an industry by means which prevent others from engaging in fair competition. *U. S. v. Whiting*, 212 S., 478. 5—464
3. "Boycott."—A combination by employees of railway companies to injure in his business the owner of cars operated by the companies, by compelling them to cease using his cars by threats of quitting and by actually quitting their service, thereby inflicting on them great injury, where the relation between him and the companies is mutually profitable, and has no effect whatever on the character or reward of the services of the employees so combining, is a boycott, and an unlawful conspiracy at common law. *Thomas v. Cin., N. O. & T. P. Ry. Co.*, 62 F., 803. 1—267
See also SECONDARY BOYCOTT.
4. "Cause of action" may be defined as being composed of the right of the complainant, and the obligation, duty, or wrong of the defendant, combined. *Boyd v. N. Y. & H. R. R. Co.*, 220 F., 179. 5—518
5. "Civil Contempt."—A proceeding, instituted by an aggrieved party to punish the other party for contempt for affirmatively violating an injunction in the same action in which the injunction order was issued, and praying for damages and costs, is a civil proceeding in contempt, and is part of the main action. *Gompers v. Bucks Stove & Range Co.*, 221 U. S., 444. 4—785
6. A "closed shop" is one that employs union labor only. *Irving v. Joint Council of Carpenters, etc.*, 180 F., 896. 5—378
7. "Combination" or "Conspiracy."—The Sherman Law declares that every contract, combination in the form of trust or otherwise, and conspiracy in restraint of trade or commerce in any Territory of the United States, or in restraint of trade or commerce between any such Territory and another, etc., are declared illegal, and that every person who shall make any such contract or engage in any such "combination or conspiracy" shall be deemed guilty of a misdemeanor. *Held*, that the words "combination or conspiracy" as so used were synonymous, and hence an indictment alleging that defendants entered into a "combination or conspiracy" in restraint of trade was not duplicitous as alleging two distinct offenses. *Tribolet v. U. S.*, 95 Pac. Rep., 87. 3—320
8. "Combination" and "Monopoly."—Where defendants were indicted in separate counts, one for combination and the other for monopoly, in violation of the Sherman Law, such offenses were not identical, but were legally distinct and justified separate punishment on conviction. *U. S. v. MacAndrews & Forbes Co.*, 149 F., 838. 3—102
9. Commerce.—The word "commerce" in the statute is not synonymous with "trade," as used in the common-law phrase

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- "restraint of trade" but has the meaning of the word in that clause of the Constitution which grants to Congress power to regulate interstate and foreign commerce. *U. S. v. Debs*, 64 F., 724. 1—322
10. **Same.**—The word "commerce," as used in the Sherman Law and in the Constitution of the United States, has a broader meaning than the word "trade." Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, as well as the purchase, sale, and exchange of commodities. *U. S. v. Cassidy*, 67 F., 698. 1—452
11. **Same.**—Commerce is the sale or exchange of commodities, but that which the law looks upon as the body of commerce is not restricted to specific acts of sale or exchange. It includes the intercourse—all the initiatory and intervening acts, instrumentalities, and dealings—that directly bring about the sale or exchange. *U. S. v. Swift & Co.*, 122 F., 529. 2—237
12. **"Commerce."**—The commerce referred to by the words "any part" in section 2 of the Sherman Law, as construed in the light of the manifest purpose of that act, includes geographically any part of the United States and also any of the classes of things forming a part of interstate or foreign commerce. *Standard Oil Co. v. U. S.*, 221 U. S., 61. 4—130
13. **"Competition"** is the striving for something which another is actively seeking and wishes to gain. *U. S. v. Union Pacific R. R. Co.*, 226 U. S., 87. 4—676
14. **"Conspiracy."**—The term "conspiracy" in section 1 of the Sherman Law, is used in its well-settled legal meaning, and any restraint of interstate trade or commerce, if accomplished by conspiracy, is unlawful. *U. S. v. Debs*, 64 F., 724. 1—322
15. **Same.**—A conspiracy consists in an agreement to do something; but in the sense of the law, and therefore in the sense of this statute, it must be an agreement between two or more to do, by concerted action, something criminal or unlawful, or, it may be, to do something lawful by criminal or unlawful means. A conspiracy, therefore, is in itself unlawful, and, in so far as this statute is directed against conspiracies in restraint of trade among the several States it is not necessary to look for the illegality of the offense in the kind of restraint proposed. Any proposed restraint of trade, though it be in itself innocent, if it is to be accomplished by conspiracy, is unlawful. *Ib.* 1—352
16. **Same.**—A conspiracy is a combination of two or more persons by concerted action to accomplish a criminal or unlawful purpose, or some purpose not in itself criminal, by criminal or unlawful means. *Pettibone v. U. S.*, 13 Sup. Ct., 542; 148 U. S., 203, cited. *U. S. v. Cassidy*, 67 F., 698. 1—449

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17. **Same.**—Unlike "combination," "conspiracy" is a term of art. In the Sherman Law it is to be interpreted independently of the preceding words, and an indictment thereunder should therefore describe something that amounts to a conspiracy under the act conformably to the rules of pleading at common law, as perhaps modified by general federal statutes. *U. S. v. MacAndrews & Forbes Co.*, 149 F., 831. 3—89
18. **"Conspiracy."**—The word "conspiracy," as used in the Sherman Law, has substantially the same meaning as the word "contract." *U. S. v. Kissel*, 173 F., 827. 3—749
19. **A "Conspiracy"** is a combination of two or more persons, by concerted action, to accomplish a criminal or unlawful purpose or some purpose not in itself criminal or unlawful, by criminal or unlawful means. *Mitchell v. Hitchman Coal & Coke Co.*, 214 F., 708. 5—623
- 19a. **A "Conspiracy"** is a partnership in criminal purposes brought about by an agreement, and so long as the partnership continues the conspiracy continues, whether anything is done in furtherance of it or not. *Patterson v. U. S.*, 222 F., 631. 5—108
20. **"Control,"** as used in the declaration in this case, is the substantial equivalent of "monopolize," as used in the Sherman Law. *Hood Rubber Co. v. U. S. Rubber Co.*, 229 F., 587. 6—429
- 20a. **"Contributory infringement"** consists in the intentional aiding of one person by another in the unlawful making or selling or using of a patented invention. *Henry v. A. B. Dick Co.*, 223 U. S., 33. 6—761
21. **"Corner."**—A "corner" is the securing of such control of the immediate supply of any product as to enable those operating the corner to arbitrarily advance the price of the product. It is ordinarily created by operations on boards of trade or stock exchanges, and by dealings in options and futures. *U. S. v. Patten*, 187 F., 668. 4—280
22. **Corner Not a Combination in Restraint of Competition.**—While a corner is illegal because it is a combination which arbitrarily controls the prices of a commodity, it can not be called a combination in restraint of competition since the going up of the price incident to the creation of a corner necessarily increases competition. *Ib.* 4—281
- 22a. **"Running a corner"** consists in acquiring control of all or the dominant portion of a commodity with the purpose of artificially enhancing the price. *U. S. v. Patten*, 226 U. S., 549. 4—756
23. **"Due Process of Law."**—The expressions "due process of law" and "the law of the land" are synonymous. *U. S. v. N. Y., N. H. & H. R. Co.*, 165 F., 746. 3—530

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24. **Same.**—"Due process of law" does not prohibit the establishment of special commissions or the assignment of special judges for the trial of a specific offender, so long as there is a compliance otherwise with the rules of the common law. *Ib.* 3—529
25. The phrase "Engage in such combination or conspiracy," as used in section 1 of the Sherman Law, means to embark in, take part in, or enlist in. *U. S. v. New Departure Mfg. Co.*, 204 F., 111. 5—152
26. "Hearing."—The word "hearing," as used in the Expediting Act of February 11, 1903 (32 Stat., 823), means a trial requiring judicial determination. *U. S. v. Terminal R. R. Ass'n*, 197 F., 448. 4—503
27. "Immunity."—"Immunity" does not mean that no acts in fact were ever done, but that there may be no prosecution in respect thereto. Immunity does not wipe out the history of events. *U. S. v. Swift*, 186 F., 1017. 4—75
28. "Interstate Commerce."—"Interstate commerce" comprehends intercourse for the purposes of trade in any and all of its forms, including transportation, purchase, sale, and exchange of commodities between the citizens of different States; and if any commercial transaction reaches an entirety in two or more States, and if the parties dealing with reference to that transaction deal from different States, then the whole transaction is a part of the interstate commerce of the United States, and subject to regulation by Congress under the Constitution. *In re charge to Grand Jury*, 151 F., 838. 3—162
29. "Mail Trains."—A mail train is a train as usually and regularly made up, including not merely a mail car, but such other cars as are usually drawn in the train. If the train usually carries a Pullman car, then such train, as a mail train, would include the Pullman car as a part of its regular make-up. Therefore, if such a train is obstructed or retarded because it draws a Pullman car, it is no defense that the parties so delaying it were willing that the mail should proceed if the Pullman car were left behind. *U. S. v. Clark*, Fed. Cas. No. 14805, 23 Int. Rev. Rec., 306, followed. *U. S. v. Cassidy*, 67 F., 762. 1—536
30. **Same.**—Any train which is carrying mail under the sanction of the postal authorities is a mail train in the eye of the law. *Ib.* 1—561
31. "Manufacturing" is a word of such wide and loose meaning as to include the preparation by art of any finished product from raw material. *Great Atl. & Pac. Tea Co. v. Cream of Wheat Co.*, 224 F., 568. 5—862
32. A "wholesaler" is one who buys in comparatively large quantities, and who sells, usually in smaller quantities, but never

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- to the ultimate consumer of an individual unit. He sells either to a "jobber," a sort of middleman, or to a "retailer," who sells to the consumer. The quantities bought by the wholesaler may vary from a fraction of a carload to many carloads; it being the character, not of his buying, but of his selling, that marks him as a wholesaler. *Great Atl. & Pac. Tea Co. v. Cream of Wheat Co.*, 227 F., 47. 5—876
33. "Middlings" are the coarse flour and fine bran, separated by bolting, from fine flour and coarse bran. *Great Atl. & Pac. Tea Co. v. Cream of Wheat Co.*, 224 F., 568. 5—882
34. "Monopolize."—The word "monopolize" can not be intended to be used with reference to the acquisition of exclusive rights under Government concession, but that the lawmaker has used the word to mean "to aggregate" or "concentrate" in the hands of few, practically, and, as a matter of fact, and according to the known results of human action, to the exclusion of others; to accomplish this end by what, in popular language, is expressed in the word "pooling," which may be defined to be an aggregation of property or capital belonging to different persons, with a view to common liabilities and profits. *Amer. Biscuit & Mfg. Co. v. Klotz*, 44 F., 724. 1—7
35. To "monopolize," in a legal and accurate sense, is to exclude other persons, though not necessarily all persons; and there can be no monopolizing in making a single interstate sale, or a great number of such sales, even though wrongful means are used in making them, and a wrong of some other nature is done competitors. *Patterson v. U. S.*, 222 F., 619. 5—91
36. Monopolize.—The words "to monopolize" and "monopolize" as used in section 2 of the Sherman Law, reach every act bringing about the prohibited result. *Standard Oil Co. v. U. S.*, 221 U. S., 61. 4—130
37. "Monopolized."—Trade and commerce are monopolized, within the meaning of the Sherman Law, prohibiting the same, when, as a result of efforts to that end, a few persons acting together obtain power to control the price of a commodity moving in interstate commerce, though such power is not exercised, its existence being sufficient. *U. S. v. Patten*, 187 F., 672. 4—286
38. "Monopolizing, or Attempting to Monopolize."—To constitute the offense of "monopolizing, or attempting to monopolize," trade or commerce among the States, within the meaning of section 2 of the Sherman Law, it is necessary to acquire, or attempt to acquire, an exclusive right in such commerce by means which will prevent others from engaging therein. *In re Green*, 52 F., 104. 1—55
39. Monopoly of trade embraces two essential elements: (1) The acquisition of an exclusive right to, or the exclusive control

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of, that trade; and (2) the exclusion of all others from that right and control. *U. S. v. Trans-Mo. Ft. Assn.*, 58 F., 58, 84.
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40. A "monopoly," at common law, and under the Sherman Law, implies a control of goods or service which the public desires. *U. S. v. Whiting*, 212 F., 478. 5—464
41. The usual meaning of "monopoly" is the acquisition of something for one's self, and while the word is used most appropriately when the whole of a given trade is acquired, the terms of section 2 of the Sherman Law make it applicable to monopolization of a part of trade. *U. S. v. Keystone Watch Case Co.*, 218 F., 516. 5—500
42. "Municipal Corporation."—A municipal corporation engaged in operating water, lighting, or similar plants, from which a revenue is derived, is, in relation to such matters, a business corporation, and may maintain an action under section 7 of the Sherman Law, for injury to its "business" by reason of a combination or conspiracy in restraint of interstate trade or commerce made unlawful by such act. *City of Atlanta v. Chattanooga Foundry & Pipe Works*, 127 F., 23. 2—299
43. "More or Less."—Where, in a contract for the manufacture and delivery of goods, the statement of quantity is qualified by the words "more or less," these, unless supplemented by language giving them a broader scope, apply only to such accidental or immaterial variations in quantity as would naturally occur in connection with such a transaction. *Hadley Dean Plate Glass Co. v. Highland Glass Co.*, 143 F., 242.
2—994
44. "Pardon"—Nature of "Pardon"—"Amnesty."—A "pardon" or "amnesty" secures against the consequences of one's acts, and not against the acts of themselves. It involves forgiveness; not forgetfulness. *U. S. v. Swift*, 186 F., 1017. 4—75
45. "Patent."—A patent is a grant of a right to exclude all others from making, using, or selling the invention covered by it. *U. S. v. Standard Sanitary Mfg. Co.*, 191 F., 190. 4—421
46. "Person."—The word "person" in section 2 of the Sherman Law, as construed by reference to section 8 thereof, implies a corporation as well as an individual. *Standard Oil Co. v. U. S.*, 221 U. S., 61. 4—130
47. "Restraint of Trade."—The words "in restraint of trade," in section 1 of the Sherman Law, have, in connection with the words "contract," and "combination," their common-law significance, but the term "conspiracy" is used in its well-settled legal meaning, so that any restraint of trade or commerce, if to be accomplished by conspiracy, is unlawful. *U. S. v. Debs*, 64 F., 748. 1—352

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48. **Same.**—The construction of the statute is not affected by the use of the phrase "in restraint of trade," rather than one of the phrase "to injure trade" or "to restrain trade." *Ib.*
1—352
49. **"Restraint of Trade."**—The terms "restraint of trade," and "attempts to monopolize," as used in the Sherman Law, took their origin in the common law and were familiar in the law of this country prior to and at the time of the adoption of the act, and their meaning should be sought from the conceptions of both English and American law prior to the passage of the act. *Standard Oil Co. v. U. S.*, 221 U. S., 50.
4—121
50. **Restraint of Trade.**—The words "restraint of trade" at common law, and in the law of this country at the time of the adoption of the Sherman Law, embraced only acts, contracts, agreements, or combinations which operated to the prejudice of the public interests by unduly restricting competition or by unduly obstructing due course of trade, and Congress intended that those words as used in that act should have a like significance; and the ruling in *Standard Oil Co. v. United States* to this effect is re-expressed and reaffirmed. *U. S. v. American Tobacco Co.*, 221 U. S., 179.
4—233
51. **"Restraint of Trade"—"Restraint of Competition."**—The provisions of the Sherman Law, making unlawful any combination "in restraint of trade or commerce among the several States" or to monopolize any part of such trade or commerce, do not make every combination in restraint of competition in interstate trade unlawful, but there may be a restraint of competition that does not amount to a restraint of trade within the meaning of the act. On the other hand, a combination can not escape the condemnation of the act merely because of the form it assumes, and a single corporation, if it arbitrarily uses its power to force weaker competitors out of business, or to coerce them into a sale to or union with such corporation, puts a restraint on interstate commerce, and monopolizes or attempts to monopolize a part of such commerce, in a sense that violates the act. *U. S. v. du Pont, etc., Co.*, 188 F., 151.
4—374
52. **"Restraint of trade,"** as used in the Sherman Law, includes "restraint of competition." *U. S. v. Eastern States Retail Lum. Deal. Ass'n*, 201 F., 584.
4—861
53. **Trade may be "restrained,"** within the meaning of the Sherman Law, by being hindered, obstructed, or destroyed. *U. S. v. Keystone Watch Case Co.*, 218 F., 515.
5—500
54. **"Secondary Boycott."**—The coercion or attempted coercion of the customers of a person who is being boycotted, to refrain

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from dealing with him, by threats that, unless they do, they themselves will be boycotted, if carried into effect, constitutes a secondary boycott. *Gompers v. Bucks Stove & Range Co.*, 221 U. S., 437. 4—778

55. Same.—The circulation by an association among its members of a black-list against certain persons, and also among persons not members thereof, and the notifying of non-members that they must refrain from doing business with the persons black-listed, or they, too, would be black-listed, such action, if carried into effect against non-members, would constitute a secondary boycott and would be illegal. *U. S. v. King*, 229 F., 279. 6—420

See also **BOYCOTT**.

56. **Strike**.—A strike is merely an agreement by all the members of a union not to do business with an employer, in order to obtain shorter hours, higher wages, or some other legitimate end. *U. S. v. King*, 229 F., 279. 6—419
57. **Trade** is the making and enforcing of contracts. (Per Sanborn, C. J., dissenting.) *U. S. v. International Harvester Co.*, 214 F., 897, 1005. 5—664
58. **Trade**.—The word "trade" means the buying as well as the selling of property. (Per Wooley, C. J.), *U. S. v. U. S. Steel Corporation*, 223 F., 177. 6—180
59. "Trade" necessarily involves both buying and selling, and a complete domination of either, is a domination of trade. *Hood Rubber Co. v. U. S. Rubber Co.*, 229 F., 583, 588. 6—429
60. The words "trade" and "commerce," as used in the Sherman and the Clayton Laws, do not apply to the business of fire insurance in the District of Columbia. *Lown v. Underwriters' Ass'n, D. C.* (Not reported.) 6—1048
61. "Trust."—What is commonly termed a "trust" is a species of combination organized by individuals or corporations for the purpose of monopolizing the manufacture of or traffic in various articles and commodities, which were well known and fully understood when the Sherman Law was approved. *U. S. v. Northern Securities Co.*, 120 F., 721, 724. 2—220
62. The words "vend" and "vending," as used in section 4952, Revised Statutes, in regard to the copyright protection accorded authors and as used in section 4884, Revised Statutes, in regard to the protection accorded inventors for their patented articles, are substantially the same, and the protection intended to be secured to authors and inventors is substantially identical. *Bauer & Cie v. O'Donnell*, 229 U. S., 13. 6—805

WRITS.

1. **Of Certiorari May Be Granted by Supreme Court to Review Proceedings in Contempt**.—While the Supreme Court can not review by appeal or writ of error a judgment of the Court of

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Appeals of the District of Columbia punishing for contempt, it may grant a writ of certiorari to review the same. *Gompers v. U. S.*, 283 U. S., 606. 4—795

2. Of Error, Issued by Supreme Court, When Should Go to Circuit Court of Appeals.—For review in the Supreme Court of a final judgment of the circuit court of appeals directing that an action be dismissed, the writ of error should go to that court; and its efficacy is not impaired by the circumstances that, before the allowance of the writ by that court, the trial court, obeying the mandate, has entered judgment of dismissal and has adjourned for the term before any application has been made to recall its action. *Thomsen v. Cayser*, 243 U. S., 82. 6—724

3. Of Prohibition, Proper Remedy to Prevent District Judge from Entering, Without Authority, Decree.—The district judge having refused to organize a court under the Expedition Act to determine the form of decree to be entered under the mandate of the Supreme Court, the latter court will issue its writ of prohibition directed to the district judge against entering a decree. *Ex parte U. S., Petitioner*, 226 U. S., 425. 4—511

APPENDIX.

THE FEDERAL ANTI-TRUST LAWS.

I.

THE SHERMAN ANTI-TRUST LAW.

[Act of July 2, 1890; 26 Stat., 209.]

AN ACT To protect trade and commerce against unlawful restraints and monopolies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory

or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

II.

THE ANTI-TRUST PROVISIONS OF WILSON TARIFF ACT OF AUGUST 27, 1894, AS AMENDED BY THE ACT OF FEBRUARY 12, 1913.

[28 Stat., 570; 37 Stat., 667.]

SEC. 73. That every combination, conspiracy, trust, agreement, or contract is hereby declared to be contrary to public policy, illegal and void when the same is made by or between two or more persons or corporations either of whom, as agent or principal, is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who is or shall hereafter be engaged in the importation of goods or any commodity from any foreign country in violation of this section of this act, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and on conviction thereof in any court of the United States such person shall be fined in a sum not less than one hundred dollars and not exceeding five thousand dollars, and shall

be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.

SEC. 74. That the several circuits courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of section seventy-three of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 75. That whenever it shall appear to the court before which any proceeding under the seventy-fourth section of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

SEC. 76. That any property owned under any contract or by any combination, or pursuant to any conspiracy, and being the subject thereof, mentioned in section seventy-three of this act, imported into and being within the United States or being in the course of transportation from one State to another, or to or from a Territory or the District of Columbia, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SEC. 77. That any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any circuit court of the United States in the district in which the defendant resides or is

found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

III.

THE CLAYTON ANTI-TRUST LAW.

[Act of October 15, 1914; 38 Stat. 730.]

AN ACT To supplement existing laws against unlawful restraints and monopolies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That "Anti-trust laws," as used herein, includes the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety; sections seventy-three to seventy-seven, inclusive, of an Act entitled "And Act to reduce taxation, to provide revenue for the Government, and for other purposes," of August twenty-seventh, eighteen hundred and ninety-four; an Act entitled "An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled 'An Act to reduce taxation, to provide revenue for the Government, and for other purposes,'" approved February twelfth, nineteen hundred and thirteen; and also this Act.

"Commerce," as used herein, means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States: *Provided, That* nothing in this Act contained shall apply to the Philippine Islands.

The word "person" or "persons" wherever used in this Act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

SEC. 2. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly to discriminate in price between different purchasers of commodities, which commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

SEC. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

SEC. 4. That any person who shall be injured in his business or property by reason of anything forbidden in the anti-trust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

SEC. 5. That a final judgment or decree hereafter rendered in any criminal prosecution or in any suit or proceeding in equity brought by or on behalf of the United States under the anti-trust laws to the effect that a defendant has violated said laws shall be prima facie evidence against such defendant in any suit or proceeding brought by any other party against such defendant under said laws as to all matters respecting which said judgment or decree would be an estoppel as between the parties thereto: *Provided*, This section shall not apply to consent judgments or decrees entered before any testimony has been taken: *Provided further*, This section shall not apply to consent judgments or decrees rendered in criminal proceedings or suits in equity, now pending, in which the taking of testimony has been commenced but has not been concluded, provided such judgments or decrees are rendered before any further testimony is taken.

Whenever any suit or proceeding in equity or criminal prosecution is instituted by the United States to prevent, restrain or punish violations of any of the anti-trust laws, the running of the statute of limitations in respect of each and every private right of action arising under said laws and based in whole or in part on any matter complained of in said suit or proceeding shall be suspended during the pendency thereof.

SEC. 6. That the labor of a human being is not a commodity or article of commerce: Nothing contained in the Anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor

shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the Anti-trust laws.

SEC. 7. That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition between the corporation whose stock is so acquired and the corporation making the acquisition, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation engaged in commerce from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

Nor shall anything herein contained be construed to prohibit any common carrier subject to the laws to regulate commerce from aiding in the construction of branches or short lines so located as to become feeders to the main line of the company so aiding in such construction or from acquiring or owning all or any part of the stock of such branch lines, nor to prevent any such common carrier from acquiring and owning all or any part of the stock of a branch or

short line constructed by an independent company where there is no substantial competition between the company owning the branch line so constructed and the company owning the main line acquiring the property or an interest therein, nor to prevent such common carrier from extending any of its lines through the medium of the acquisition of stock or otherwise of any other such common carrier where there is no substantial competition between the company extending its lines and the company whose stock, property, or an interest therein is so acquired.

Nothing contained in this section shall be held to affect or impair any right heretofore legally acquired: *Provided*, That nothing in this section shall be held or construed to authorize or make lawful anything heretofore prohibited or made illegal by the Anti-trust laws; nor to exempt any person from the penal provisions thereof or the civil remedies therein provided.

SEC. 8. That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employee of more than one bank, banking association or trust company, organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000; and no private banker or person who is a director in any bank or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer, or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

No bank, banking association or trust company, organized or operating under the laws of the United States, in any city or incorporated town or village of more than two hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee any private banker or any director or other officer or employee of any other bank, banking association or trust company located in the same place: *Provided*, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares: *Provided further*, That a director or other officer or employee of such bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other: *And provided further*, That nothing contained in this section shall forbid a director of class A of a Federal reserve bank, as defined in the Federal Reserve Act, from being an officer or director or both an officer and director in one member bank.

That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000 engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the anti-trust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions

of this Act it shall be lawful for him to continue as such for one year thereafter.

When any person elected or chosen as a director or officer or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be effected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment.

SEC. 9. Every president, director, officer or manager of any firm, association or corporation engaged in commerce as a common carrier, who embezzles, steals, abstracts or willfully misapplies, or willfully permits to be misapplied, any of the moneys, funds, credits, securities, property or assets of such firm, association or corporation, arising or accruing from, or used in, such commerce, in whole or in part, or willfully or knowingly converts the same to his own use or to the use of another, shall be deemed guilty of a felony and upon conviction shall be fined not less than \$500 or confined in the penitentiary not less than one year nor more than ten years, or both, in the discretion of the court.

Prosecutions hereunder may be in the district court of the United States for the district wherein the offense may have been committed.

That nothing in this section shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof; and a judgment of conviction or acquittal on the merits under the laws of any State shall be a bar to any prosecution hereunder for the same act or acts.

SEC. 10. That after two years from the approval of this Act no common carrier engaged in commerce shall have any dealings in securities, supplies or other articles of commerce, or shall make or have any contracts for construction or maintenance of any kind, to the amount of more than \$50,000, in the aggregate, in any one year, with another corporation, firm, partnership or association when the said com-

mon carrier shall have upon its board of directors or as its president, manager or as its purchasing or selling officer, or agent in the particular transaction, any person who is at the same time a director, manager, or purchasing or selling officer of, or who has any substantial interest in, such other corporation, firm, partnership or association, unless and except such purchases shall be made from, or such dealings shall be with, the bidder whose bid is the most favorable to such common carrier, to be ascertained by competitive bidding under regulations to be prescribed by rule or otherwise by the Interstate Commerce Commission. No bid shall be received unless the name and address of the bidder or the names and addresses of the officers, directors and general managers thereof, if the bidder be a corporation, or of the members, if it be a partnership or firm, be given with the bid.

Any person who shall, directly or indirectly, do or attempt to do anything to prevent anyone from bidding or shall do any act to prevent free and fair competition among the bidders or those desiring to bid shall be punished as prescribed in this section in the case of an officer or director.

Every such common carrier having any such transactions or making any such purchases shall within thirty days after making the same file with the Interstate Commerce Commission a full and detailed statement of the transaction showing the manner of the competitive bidding, who were the bidders, and the names and addresses of the directors and officers of the corporations and the members of the firm or partnership bidding; and whenever the said commission shall, after investigation or hearing, have reason to believe that the law has been violated in and about the said purchases or transactions it shall transmit all papers and documents and its own views or findings regarding the transaction to the Attorney General.

If any common carrier shall violate this section it shall be fined not exceeding \$25,000; and every such director, agent, manager or officer thereof who shall have knowingly voted for or directed the act constituting such violation or who shall have aided or abetted in such violation shall be deemed guilty of a misdemeanor and shall be fined not exceeding \$5,000, or confined in jail not exceeding one year, or both, in the discretion of the court.

SEC. 11. That authority to enforce compliance with sections two, three, seven and eight of this Act by the persons respectively subject thereto is hereby vested: in the Interstate Commerce Commission where applicable to common carriers, in the Federal Reserve Board where applicable to banks, banking associations and trust companies, and in the Federal Trade Commission where applicable to all other character of commerce, to be exercised as follows:

Whenever the commission or board vested with jurisdiction thereof shall have reason to believe that any person is violating or has violated any of the provisions of sections two, three, seven and eight of this Act, it shall issue and serve upon such person a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission or board requiring such person to cease and desist from the violation of the law so charged in said complaint. Any person may make application, and upon good cause shown may be allowed by the commission or board, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission or board. If upon such hearing the commission or board, as the case may be, shall be of the opinion that any of the provisions of said sections have been or are being violated, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person an order requiring such person to cease and desist from such violations, and divest itself of the stock held or rid itself of the directors chosen contrary to the provisions of sections seven and eight of this Act, if any there be, in the manner and within the time fixed by said order. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission or board may at any time, upon such notice and in such manner as it shall deem proper, modify

or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person fails or neglects to obey such order of the commission or board while the same is in effect, the commission or board may apply to the circuit court of appeals of the United States, within any circuit where the violation complained of was or is being committed or where such person resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission or board. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such person and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission or board. The findings of the commission or board as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission or board, the court may order such additional evidence to be taken before the commission or board and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission or board may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission or board to cease and desist from a violation charged may obtain a review of such order in said circuit court of appeals by filing in the court a written petition praying that the order of the commission or board be set aside. A copy of such petition shall be forthwith served upon the commission or board, and thereupon the commission or board forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission or board as in the case of an application by the commission or board for the enforcement of its order, and the findings of the commission or board as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission or board shall be exclusive.

Such proceedings in the circuit court of appeals shall be given precedence over other cases pending therein, and shall be in every way expedited. No order of the commission or board or the judgment of the court to enforce the same shall in any wise relieve or absolve any person from any liability under the Anti-trust Acts.

Complaints, orders, and other processes of the commission or board under this section may be served by anyone duly authorized by the commission or board, either (a) by delivering a copy thereof to the person to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation to be served; or (b) by leaving a copy thereof at the principal office or place of business of such person; or (c) by registering and mailing a copy thereof addressed to such person at his principal office or place of business. The verified return by the person so serving said complaint, order, or other process setting forth the manner of said service shall be proof of the same, and the return post-office receipt for said complaint, order, or other process registered and mailed as aforesaid shall be proof of the service of the same.

SEC. 12. That any suit, action, or proceeding under the Anti-trust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

SEC. 13. That in any suit, action, or proceeding brought by or on behalf of the United States subpcenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the Anti-trust laws may run into any other district: *Provided*, That in civil cases no writ of subpcena shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

SEC. 14. That whenever a corporation shall violate any of the penal provisions of the Anti-trust laws, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts constituting in whole or in part such violation, and such violation shall be deemed a misdemeanor, and upon conviction therefor of any such director, officer, or agent he shall be punished by a fine of not exceeding \$5,000 or by imprisonment for not exceeding one year, or by both, in the discretion of the court.

SEC. 15. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any

time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

SEC. 16. That any person, firm, corporation, or association shall be entitled to sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of the Anti-trust laws, including sections two, three, seven and eight of this Act, when and under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings, and upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue: *Provided*, That nothing herein contained shall be construed to entitle any person, firm, corporation, or association, except the United States, to bring suit in equity for injunctive relief against any common carrier subject to the provisions of the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, in respect of any matter subject to the regulations, supervision, or other jurisdiction of the Interstate Commerce Commission.

SEC. 17. That no preliminary injunction shall be issued without notice to the opposite party.

No temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified bill that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be indorsed with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall

by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require.

Section two hundred and sixty-three of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven, is hereby repealed.

Nothing in this section contained shall be deemed to alter, repeal, or amend section two hundred and sixty-six of an Act entitled "An Act to codify, revise, and amend the laws relating to the judiciary," approved March third, nineteen hundred and eleven.

SEC. 18. That, except as otherwise provided in section 16 of this Act, no restraining order or interlocutory order of injunction shall issue, except upon the giving of security by the applicant in such sum as the court or judge may deem proper, conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby.

SEC. 19. That every order of injunction or restraining order shall set forth the reasons for the issuance of the same, shall be specific in terms, and shall describe in reasonable detail, and not by reference to the bill of complaint or other document, the act or acts sought to be restrained, and

shall be binding only upon the parties to the suit, their officers, agents, servants, employees, and attorneys, or those in active concert or participating with them, and who shall, by personal service or otherwise, have received actual notice of the same.

SEC. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

SEC. 21. That any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the Dis-

trict of Columbia by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States, or under the laws of any State in which the act was committed, shall be proceeded against for his said contempt as hereinafter provided.

SEC. 22. That whenever it shall be made to appear to any district court or judge thereof, or to any judge therein sitting, by the return of a proper officer on lawful process, or upon the affidavit of some credible person, or by information filed by any district attorney, that there is reasonable ground to believe that any person has been guilty of such contempt, the court or judge thereof, or any judge therein sitting, may issue a rule requiring the said person so charged to show cause upon a day certain why he should not be punished therefor, which rule, together with a copy of the affidavit or information, shall be served upon the person charged, with sufficient promptness to enable him to prepare for and make return to the order at the time fixed therein. If upon or by such return, in the judgment of the court, the alleged contempt be not sufficiently purged, a trial shall be directed at a time and place fixed by the court: *Provided, however,* That if the accused, being a natural person, fail or refuse to make return to the rule to show cause, an attachment may issue against his person to compel an answer, and in case of his continued failure or refusal, or if for any reason it be impracticable to dispose of the matter on the return day, he may be required to give reasonable bail for his attendance at the trial and his submission to the final judgment of the court. Where the accused is a body corporate, an attachment for the sequestration of its property may be issued upon like refusal or failure to answer.

In all cases within the purview of this Act such trial may be by the court, or, upon demand of the accused, by a jury; in which latter event the court may impanel a jury from the jurors then in attendance, or the court or the judge thereof in chambers may cause a sufficient number of jurors to be selected and summoned, as provided by law, to attend at the time and place of trial, at which time a jury shall be selected

and impaneled as upon a trial for misdemeanor; and such trial shall conform, as near as may be, to the practice in criminal cases prosecuted by indictment or upon information.

If the accused be found guilty, judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may, where more than one is so damaged, be divided or apportioned among them as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of \$1,000, nor shall such imprisonment exceed the term of six months: *Provided*, That in any case the court or a judge thereof may, for good cause shown, by affidavit or proof taken in open court or before such judge and filed with the papers in the case, dispense with the rule to show cause, and may issue an attachment for the arrest of the person charged with contempt; in which event such person, when arrested, shall be brought before such court or a judge thereof without unnecessary delay and shall be admitted to bail in a reasonable penalty for his appearance to answer to the charge or for trial for the contempt; and thereafter the proceedings shall be the same as provided herein in case the rule had issued in the first instance.

SEC. 23. That the evidence taken upon the trial of any persons so accused may be preserved by bill of exceptions, and any judgment of conviction may be reviewed upon writ of error in all respects as now provided by law in criminal cases, and may be affirmed, reversed, or modified as justice may require. Upon the granting of such writ of error, execution of judgment shall be stayed, and the accused, if thereby sentenced to imprisonment, shall be admitted to bail in such reasonable sum as may be required by the court, or by any justice, or any judge of any district court of the United States or any court of the District of Columbia.

SEC. 24. That nothing herein contained shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of

any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section twenty-one of this Act, may be punished in conformity to the usages at law and in equity now prevailing.

SEC. 25. That no proceeding for contempt shall be instituted against any person unless begun within one year from the date of the act complained of; nor shall any such proceeding be a bar to any criminal prosecution for the same act or acts; but nothing herein contained shall affect any proceedings in contempt pending at the time of the passage of this Act.

SEC. 26. If any clause, sentence, paragraph, or part of this Act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

IV.

EXPEDITING ACT OF FEBRUARY 11, 1903, AS AMENDED BY THE ACT OF JUNE 25, 1910.

[32 Stat., 823; 36 Stat., 854.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one of the act entitled: "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted," approved February eleventh, nineteen hundred and three, be, and the same is hereby, amended so as to read as follows:

“That in any suit in equity pending or hereafter brought in any circuit court of the United States under the act entitled ‘An act to protect trade and commerce against unlawful restraints and monopolies,’ approved July second, eighteen hundred and ninety, ‘An act to regulate commerce,’ approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said court, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select; or, in case the full court shall not at any time be made up by reason of the necessary absence or disqualification of one or more of the said circuit judges, the Justice of the Supreme Court assigned to that circuit or the other circuit judge or judges may designate a district judge or judges within the circuit who shall be competent to sit in said court at the hearing of said suit. In the event the judges sitting in such case shall be equally divided in opinion as to the decision or disposition of said cause, or in the event that a majority of said judges shall be unable to agree upon the judgment, order, or decree finally disposing of said case in said court which should be entered in said cause, then they shall immediately certify that fact to the Chief Justice of the United States, who shall at once designate and appoint some circuit judge to sit with said judges and to assist in determining said cause. Such order of the Chief Justice shall be immediately transmitted to the clerk of the circuit court in which said cause is pending, and shall be entered upon the minutes of said court. Thereupon said cause shall at once be set down for reargument and the parties thereto notified in writing by the clerk of said court of the action of the court and the date fixed for the reargument thereof. The provisions of this section shall

apply to all causes and proceedings in all courts now pending, or which may hereafter be brought."

SEC. 2. That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the Supreme Court, and must be taken within sixty days from the entry thereof: *Provided*, That in any case where an appeal may have been taken from the final decree of a circuit court to the circuit court of appeals before this act takes effect, the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law.

V.

THE JUDICIAL CODE.

[36 Stat., 1167.]

"AN ACT To codify, revise, and amend the laws relating to the judiciary." (Approved March 3, 1911; in effect January 1, 1912, 36 Stat., 1087.)

* * * * *

SEC. 289. The circuit courts of the United States, upon the taking effect of this act, shall be, and hereby are, abolished. * * *

SEC. 290. All suits and proceedings pending in said circuit courts on the date of the taking effect of this act, whether originally brought therein or certified thereto from the district courts, shall thereupon and thereafter be proceeded with and disposed of in the district courts in the same manner and with the same effect as if originally begun therein. * * *

SEC. 291. Wherever, in any law not embraced within this act, any reference is made to, or any power or duty is conferred or imposed upon, the circuit courts, such reference shall, upon the taking effect of this act, be deemed and held to refer to, and to confer such power and impose such duty upon, the district courts.

VI.

THE IMMUNITY PROVISION OF THE ACT OF FEBRUARY
25, 1903.

[32 Stat., 854, 903.]

AN ACT Making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes.

* * * * *

That for the enforcement of the provisions of the act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and all acts amendatory thereof or supplemental thereto, and of the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, and all acts amendatory thereof or supplemental thereto, and sections seventy-three, seventy-four, seventy-five, and seventy-six of the act entitled "An act to reduce taxation, to provide revenue for the Government, and other purposes," approved August twenty-seventh, eighteen hundred and ninety-four, the sum of five hundred thousand dollars, to be immediately available, is hereby appropriated, out of any money in the Treasury not heretofore appropriated, to be expended under the direction of the Attorney General in the employment of special counsel and agents of the Department of Justice to conduct proceedings, suits, and prosecutions under said acts in the courts of the United States: *Provided*, That no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under said acts: *Provided further*, That no person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

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VII.

AN ACT DEFINING THE RIGHT OF IMMUNITY.

[34 Stat., 798.]

AN ACT Defining the right of immunity of witnesses under the act entitled "An act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, and an act entitled "An act to establish the Department of Commerce and Labor," approved February fourteenth, nineteen hundred and three, and an act entitled "An act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and an act entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," approved February twenty-fifth, nineteen hundred and three.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That under the immunity provisions in the act entitled "An act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, in section six of the act entitled "An act to establish the Department of Commerce and Labor," approved February fourteenth, nineteen hundred and three, and in the act entitled "An act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and in the act entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," approved February twenty-fifth, nineteen hundred and three, immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath.

Approved, June 30, 1906.

VIII.

THE PANAMA CANAL ACT.

[Act of Mar. 4, 1913; 37 Stat., 560.]

AN ACT To provide for the opening, maintenance, protection, and operation of the Panama Canal, and the sanitation and government of the Canal Zone.

* * * * *

SEC. 11. That section five of the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, is hereby amended by adding thereto a new paragraph at the end thereof, as follows:

"From and after the first day of July, nineteen hundred and fourteen, it shall be unlawful for any railroad company or other common carrier subject to the act to regulate commerce to own, lease, operate, control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic; and in case of the violation of this provision each day in which such violation continues shall be deemed a separate offense."

Jurisdiction is hereby conferred on the Interstate Commerce Commission to determine questions of fact as to the competition or possibility of competition, after full hearing, on the application of any railroad company or other carrier. Such application may be filed for the purpose of determining whether any existing service is in violation of this section and pray for an order permitting the continuance of any vessel or vessels already in operation, or for the purpose of asking an order to install new service not in conflict with the provisions of this paragraph. The commission may on its own motion or the application of any shipper institute proceedings to inquire into the operation of any vessel in use by any railroad or other carrier which has not applied

to the commission and had the question of competition or the possibility of competition determined as herein provided. In all such cases the order of said commission shall be final.

If the Interstate Commerce Commission shall be of the opinion that any such existing specified service by water other than through the Panama Canal is being operated in the interest of the public and is of advantage to the convenience and commerce of the people, and that such extension will neither exclude, prevent, nor reduce competition on the route by water under consideration, the Interstate Commerce Commission may, by order, extend the time during which such service by water may continue to be operated beyond July first, nineteen hundred and fourteen. In every case of such extension the rates, schedules, and practices of such water carrier shall be filed with the Interstate Commerce Commission and shall be subject to the act to regulate commerce and all amendments thereto in the same manner and to the same extent as is the railroad or other common carrier controlling such water carrier or interested in any manner in its operation: *Provided*, Any application for extension under the terms of this provision filed with the Interstate Commerce Commission prior to July first, nineteen hundred and fourteen, but for any reason not heard and disposed of before said date, may be considered and granted thereafter.

No vessel permitted to engage in the coastwise or foreign trade of the United States shall be permitted to enter or pass through said canal if such ship is owned, chartered, operated, or controlled by any person or company which is doing business in violation of the provisions of the act of Congress approved July second, eighteen hundred and ninety, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," or the provisions of sections seventy-three to seventy-seven, both inclusive, of an act approved August twenty-seventh, eighteen hundred and ninety-four, entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," or the provisions of any other act of Congress amending or supplementing the said act of July second, eighteen hundred and ninety, commonly known as the Sherman Anti-trust Act, and amendments thereto, or said sections of the act of August twenty-seventh, eighteen hundred and ninety-four.

The question of fact may be determined by the judgment of any court of the United States of competent jurisdiction in any cause pending before it to which the owners or operators of such ships are parties. Suit may be brought by any shipper or by the Attorney General of the United States.

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